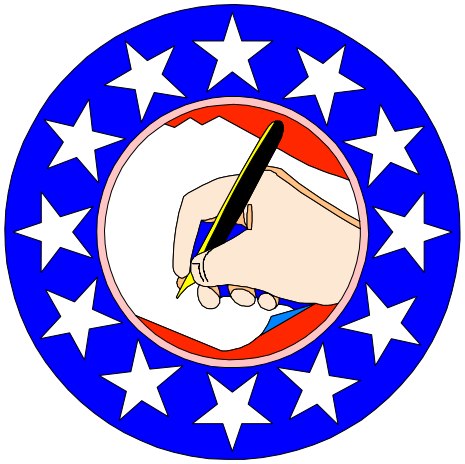

ARKANSAS LAWS RELATING TO LABOR 2005

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CHAPTER 1

ESTABLISHMENT OF THE DEPARTMENT AND GENERAL POWERS

11-2-101. Purpose.

The purpose of the Department of Labor shall be to foster, promote, and develop the welfare of the wage earners of Arkansas, to improve their working conditions, and to advance their opportunities for profitable employment.

11-2-102. Definitions.

When used in this subchapter, unless the context otherwise requires:

(1)(A) "Employer" includes every person, firm, corporation, partnership, stock association, agent, manager, representative, foreman, or other persons having control or custody of any employment, place of employment, or of any employee.

(B) However, this subchapter shall not affect any employer engaged exclusively in farming operations, nor shall it affect employers employing less than five (5) persons;

(2) "Safe" or "safety" as applied to any employment or place of employment shall include conditions and methods of sanitation and hygiene reasonably necessary for the protection of the life, health, safety, and welfare of employees or the public.

11-2-103. Exception.

This subchapter shall not apply to mines and mining or the mining industry.

11-2-104. Penalties.

(a) Any employer or owner who violates or fails or refuses to comply with any provision of this subchapter, any lawful order of the director, or any judgment or decree made by any court in connection with the provisions of this subchapter for which no penalty has been otherwise provided shall be guilty of a misdemeanor.

(b) Upon conviction, he shall be fined not less than ten dollars ($10.00) nor more than one hundred dollars ($100), or shall be imprisoned for a period not exceeding six (6) months, or both fined and imprisoned for each offense.

(c) Each day the violation, omission, failure, or refusal continues shall be deemed a separate offense.

11-2-105. Enforcement.

(a)(1) It shall be the duty of the Attorney General and the several prosecuting attorneys, upon request of the Director of the Department of Labor, or any of his authorized representatives, to prosecute any violation of the law which is the duty of the director to enforce.

(2) The director may, upon his own motion, bring all necessary suits and institute such prosecutions as may be necessary to properly enforce this subchapter, and he shall not be required to give bond for cost or make appeal bonds.

(b)(1) In lieu of the penalties provided in §11-2-104, any penalty except imprisonment may be recovered in a civil action in the name of the State of Arkansas.

(2) The civil action shall be entitled to an expeditious hearing and shall receive precedence over all other matters except older matters of the same nature.

(3) Any sums forfeited under the provisions of this section shall be deposited with the Treasurer of State in the same manner as provided by law for other moneys of the state.

11-2-106. Creation.

(a) A Department of Labor is created and established under the supervision and direction of a director to be known as the Director of the Department of Labor.

(b) The director may set up within the department such divisions as he may deem necessary for the exercise of the powers and the performance of the duties of the department, except as otherwise provided by law.

11-2-107. Director - Appointment, compensation, etc.

(a) The Governor shall appoint the Director of the Department of Labor, subject to confirmation by the Senate.

(b)(1) The director shall hold office for a term of two (2) years or until his successor is appointed and qualified.

(2) The director shall be a person who, on account of his previous vocation, employment or affiliation can be classed as a representative of employees.

(3) An individual chosen to fill a vacancy shall be appointed only for the unexpired portion of the term of the director whom he shall succeed, and shall have the qualifications as the director.

(4) All appointments made while the Senate is not in regular session shall be effective ad interim.

(c) The director shall give a bond in the sum of two thousand dollars ($2,000) with sureties to be approved by the Governor, conditioned for the faithful discharge of the duties of his office.

(d) The director shall also take the oath of office prescribed by the Constitution.

(e) The director shall provide himself with a suitable seal which shall be judicially noticed.

11-2-108. Director - Powers and duties generally.

In addition to such other duties and powers as may be conferred upon him by law, the Director of the Department of Labor shall have the power, jurisdiction, and authority:

(1) To enforce all labor laws in the State of Arkansas, the enforcement of which is not otherwise specifically provided for;

(2) To administer and enforce all laws, rules, and regulations which are the duty of the department to administer and enforce;

(3) To direct, except as otherwise provided, make, or cause to be made all necessary inspections to see that all laws and rules made pursuant thereto which the department has the duty, power, and authority to enforce are promptly and effectively carried out;

(4) To make investigations, collect and compile statistical information, and report upon conditions of labor generally and upon all matters relating to the enforcement and effect of the provisions of this subchapter and of the rules issued hereunder.

11-2-109. Director - Intervention in and arbitration of labor disputes.

(a) In addition to such other duties and powers as may be conferred upon him by law, the Director of the Department of Labor shall have the power, jurisdiction, and authority:

(1)(A) To intervene or authorize his representative to intervene in any labor dispute in a strictly conciliatory or mediatory capacity whenever he is extended a written invitation to do so by either party to the controversy.

(B) However, the department may proffer its services to both parties when a work stoppage is threatened and neither party requests intervention;

(2) To do all in his power to promote the voluntary arbitration of disputes between employers and employees and to avoid the necessity of resorting to lockouts, boycotts, blacklists, discriminations, and legal proceedings in matters of employment.

(b)(1) In pursuance of his duty, whenever both sides to any controversy agree to voluntary arbitration, the director may appoint temporary boards of arbitration, prescribe rules of procedure for the arbitration boards, conduct investigations and hearings, publish reports and advertisements, and do all things convenient and necessary to accomplish the purposes of this subchapter.

(2) Members of the boards of arbitration may receive expense reimbursement in accordance with §25-16-901 et seq.

(c)(1) The director may designate an employee of the department to act as chief mediator and may detail other employees or persons not in the department from time to time to act as his assistants for the purpose of executing these provisions.

(2) Employees of the department shall serve on temporary boards without extra compensation.

11-2-110. Director - Rulemaking authority.

(a) In addition to such other powers and duties as may be conferred upon him by law, the Director of the Department of Labor shall have the power to make, modify, and repeal

reasonable rules for the prevention of accidents or industrial or occupational diseases in every employment or place of employment and to make, modify, and repeal reasonable rules for the construction, repair, and maintenance of places of employment, places of public assembly, and public buildings which shall render them safe.

(b) The director shall have the power to make, modify, or repeal such rules, or changes in rules, as he may deem necessary to carry out the provisions of this subchapter.

(c) The director may appoint committees composed of employers, employees, and experts to suggest rules or changes therein.

(d) The rules of the director shall have the force and effect of law and shall be enforced by the director in the same manner as the provisions of this subchapter.

11-2-111. Office - Employees - Location of hearings.

(a) The Director of the Department of Labor is authorized to appoint a deputy director, a secretary, the heads of divisions, and such other employees as may be necessary. He is authorized to assign them to their duties and recommend to the General Assembly the salaries which are to be fixed by appropriation.

(b) The department shall keep an office in the City of Little Rock and shall maintain such other office as shall meet the convenience of the department and the public. The department shall be provided by the Secretary of State with suitable rooms, necessary furniture, stationery, books, periodicals, and other supplies.

(c) The members, employees, and agents of the department shall be entitled to receive from the state their necessary and actual expenses while traveling on the business of the department either within or without the State of Arkansas.

(d) The director and his authorized representatives may hold hearings at any place other than the Capitol when the convenience of the department and of the interested parties require.

11-2-112. Promulgation of rules.

(a) Before any rule is adopted, amended, or repealed, there shall be a public hearing thereon, notice of which shall be published at least once and not less than ten (10) days prior to the public hearing in such newspaper as the Director of the Department of Labor may prescribe.

(b)(1) All rules and all amendments and repeals thereof shall, unless otherwise prescribed by the director, take effect thirty (30) days after the first publication thereof, and certified copies shall be filed in the office of the Secretary of State.

(2) Every rule adopted and every amendment or repeal shall be published in such manner as the director may determine, and the director shall deliver a copy to every person making application therefor. The director shall include the text of each rule or amendment in an appendix to the annual report of the Department of Labor next following the adoption or amendment of the rule.

11-2-113. Variation of rule due to difficulties or hardship.

(a) If there shall be practical difficulties or unnecessary hardships in carrying out a rule of the Director of the Department of Labor, the director may, after public hearing, make a variation from such requirement if the spirit of the rule and law shall be observed.

(b) Any person affected by the rule, or his agent, may petition the director for a variation stating the grounds therefor.

(c) The director shall fix a day for a hearing on the petition and give reasonable notice to the petitioner.

(d) A properly indexed record of all variations made shall be kept in the office of the department and open to public inspection.

11-2-114. Judicial review of rules.

(a)(1) Any person aggrieved by a rule of the Director of the Department of Labor made pursuant to §11-2-112 may commence an action in the Circuit Court of Pulaski County against the department, as defendant, to set aside the rule on the ground that it is unlawful or unreasonable.

(2) The action and the pleadings shall be governed by the laws and rules of practice applicable to other civil actions in the court.

(3) Any action brought under this section shall be commenced within thirty (30) days from the effective date of the rule.

(b)(1) All rules of the director shall be prima facie lawful and reasonable and shall not be held invalid because of any technical defect, provided there is substantial compliance with the provisions of this subchapter.

(2) All rules shall be conclusively presumed to be lawful and reasonable if the action is not commenced within thirty (30) days from the date of the rule as provided in this section.

11-2-115. Employer records - Inspection.

(a)(1) Every employer or owner shall furnish to the Director of the Department of Labor any information which the director is authorized to require and shall make true and specific answers to all questions, whether submitted orally or in writing, authorized to be put to him.

(2)(A) Every employer shall keep a true and accurate record of the name, address, and occupation of each person employed by him, of the daily and weekly hours worked by each person, and of the wages paid each pay period to each person.

(B) The records shall be kept on file for at least one (1) year after the date of the record.

(C) No employer shall make or cause to be made any false entries in any record.

(b) The director and any authorized representative of the department shall, for the purpose of examination, have access to and the right to copy from any book, account, record, payroll, paper, or documents relating to the employment of workers.

11-2-116. Entry and inspection of workplace, etc.

(a) The Director of the Department of Labor and his authorized representatives shall have the power and authority to enter any place of employment, place of public assembly, or public building for the purpose of collecting facts and statistics

relating to the employment of workers and of making inspections for the proper enforcement of all labor laws of the state.

(b) No employer or owner shall refuse to admit the director or his authorized representatives to his place of employment, public building, or place of public assembly.

11-2-117. Safe place of employment - Duties of employer and director.

(a) Every employer shall furnish employment which is safe for the employees therein and shall furnish and use safety devices and safeguards. He shall adopt and use methods and processes reasonably adequate to render such an employment and place of employment safe and shall do every other thing reasonably necessary to protect the life, health, safety, and welfare of the employees.

(b) Every employer and every owner of a place of employment, place of public assembly, or public building, now or hereafter constructed, shall construct, repair, and maintain it so as to render it safe.

(c) If the Director of the Department of Labor or his authorized representative finds that any machine, tool, or equipment, or any part thereof, is in a dangerous condition, is not properly guarded, or is dangerously placed, he shall attach to the machine, tool, or equipment a notice warning all persons against its use and setting out in complete detail the conditions which render the machine, tool, or equipment unfit for service. The machine, tool, or equipment shall not be used until it is made safe, the required safeguards or safety appliances or devices as set forth in the certificate attached thereto have been fully corrected, and notice of the correction is sent to the department by registered mail, accompanied by a certificate from a competent mechanic certifying correction of the defects.

11-2-118. Oaths, certifications, subpoenas, etc. – Enforcement by contempt.

(a) The Director of the Department of Labor and any officer of the department designated by the director, in the performance of any duty or the execution of any power prescribed by law, shall have the power to administer oaths,

certify to official acts, take and cause to be taken depositions of witnesses, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, payrolls, documents, records, and testimony.

(b) In case of failure of any person to comply with any subpoena lawfully issued, or on the refusal of any witness to produce evidence or to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of any court of competent jurisdiction or the judge thereof, upon application of the director, any member of the board, or any officer or agent of the department, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued for the court or a refusal to testify therein.

11-2-119. False statements made under oath deemed perjury.

Any employer or owner who shall knowingly testify falsely, under oath, or shall knowingly make, give, or produce any false statements or false evidence, under oath, to the Director of the Department of Labor or his authorized representatives shall be deemed guilty of perjury.

11-2-120. Annual report.

(a) The Director of the Department of Labor shall annually, on or before January 1, file with the Governor a report covering the activities of the department, accompanied by recommendations with reference to such changes in the law, applying to and affecting industrial and labor conditions, as the director may deem advisable.

(b) The report of the director shall be printed and distributed in such manner as the Governor shall authorize.

11-2-121. Agreements with government agencies.

(a) The Director of the Department of Labor is authorized to enter into agreements with the United States Government and any and all other state governments for assistance and cooperation in enforcing and implementing state and federal laws and projects in fields related to the department.

(b)(1) The department may accept payment or reimbursement for its services as provided by the acts of the Congress of the United States or the legislature of any other state.

(2) All payments or funds received by the department under this section shall be deposited in the State Treasury, to be expended as provided by law.

11-2-122. Disclosure to employees - Health benefits available.

Any employer or owner who does make available to his employees any health benefits, excluding workers' compensation, shall inform and notify his employees of the nature of those benefits as to those benefits being self-insured, fully-insured, or Employee Retirement Income Security Act-qualified, and shall provide the necessary information to enable his employees to contact the authority regulating those health benefits. The notification shall be made at such time and in such manner as prescribed by regulation promulgated by the Director of the Department of Labor.

CHAPTER 2

LABOR STANDARDS

Chapter 2
LABOR STANDARDS

A. MINIMUM WAGE AND OVERTIME LAW

11-4-201. Title

This subchapter shall be known as the "Minimum Wage Act of the State of Arkansas".

11-4-202. Policy

It is declared to be the public policy of the State of Arkansas to establish minimum wages for workers in order to safeguard their health, efficiency, and general well-being and to protect them as well as their employers from the effects of serious and unfair competition resulting from wage levels detrimental to their health, efficiency, and well-being.

11-4-203. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Director" means the Director of the Department of Labor;

(2) ""Wage" means compensation due to an employee by reason of his employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by this subchapter or by regulations of the director under this subchapter;

(3) "Employ" includes to suffer or to permit to work;

(4)(A) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.

(B)(i) "Employer" shall not include any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee for any

workweek in which fewer than four (4) employees are employed.

(ii) Nor shall "employer" or any provisions of this subchapter be deemed to include or apply to any person, firm, corporation, or other entity subject to the minimum wage and overtime provisions of the federal Fair Labor Standards Act of 1938;

(5) "Independent contractor" means any individual who contracts to perform certain work away from the premises of his employer, uses his own methods to accomplish the work, and is subject to the control of the employer only as to the result of his work;

(6) "Employee" includes any individual employed by an employer but shall not include:

(A) Any individual employed in a bona fide executive, administrative, or professional capacity, or as an outside commission-paid salesman, who customarily performs his services away from his employer's premises, taking orders for goods or services;

(B) Students performing services for any school, college, or university in which they are enrolled and are regularly attending classes;

(C) Any individual employed by the United States or by the state or any political subdivision thereof, except public schools, and school districts;

(D) Any individual engaged in the activities of any educational, charitable, religious, or nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to the organizations gratuitously;

(E) Any bona fide independent contractor;

(F) Any individual employed by an agricultural employer who did not use more than five hundred (500) man-days of agricultural labor in any calendar quarter of the preceding calendar year;

(G) The parent, spouse, child, or other member of an agricultural employer's immediate family;

(H) An individual who:

(i) Is employed as a hand-harvest laborer and is paid on a piece-rate basis in an operation which has been, and is

customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment;

(ii) Commutes daily from his permanent residence to the farm on which he is so employed; and

(iii) Has been employed in agriculture fewer than thirteen (13) weeks during the preceding calendar year;

(I) A migrant who:

(i) Is sixteen (16) years of age or under and is employed as a hand-harvest laborer;

(ii) Is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment.

(iii) Is employed on the same farm as his parents; and

(iv) Is paid the same piece-rate as employees over age sixteen (16) years are paid on the same farm;

(J) Any employee principally engaged in the range production of livestock;

(K) Any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plants, or railroad or other transportation terminal if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight (8); or

(L) An employee employed by a nonprofit recreational or educational camp that does not operate for more than seven (7) months in any calendar year;

(M) A nonprofit child welfare agency employee who serves as a houseparent that is:

(i) Directly involved in caring for children who reside in residential facilities of the nonprofit child welfare agency, and who are orphans, in foster care, abused, neglected, abandoned, homeless, in need of supervision, or otherwise in crisis situations that lead to out-of-home placements; and

(ii) Compensated at an annual rate of not less than thirteen thousand dollars ($13,000), or at an annual rate of not less than ten thousand dollars ($10,000) if the employee resides in the residential facility and receives board and lodging at no cost;

(7) “Occupation” means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed;

(8) “Gratuities” means voluntary monetary contributions received by an employee from a guest, patron, or customer for services rendered; and

(9) “Man-day” means any day during any portion of which an employee performs any agricultural labor. Any individual otherwise excluded as an “employee” under subdivision (6)(I) of this section shall be considered an employee in computing man-days of agricultural labor.

11-4-204. Law most favorable to employees applicable.

Any standards relating to minimum wages, maximum hours, or other working conditions in effect under any other law of this state on May 22, 1968, which are more favorable to employees than those applicable to employees under this subchapter or the regulations issued hereunder shall not be deemed to be amended, rescinded, or otherwise affected by this subchapter but shall continue in full force and effect and may be enforced as provided by law unless and until they are specifically superseded by standards more favorable to employees by operation of or in accordance with regulations issued under this subchapter.

11-4-205. Right of collective bargaining not affected.

Nothing in this subchapter shall be deemed to interfere with, impede, or in any way diminish the right of employers and employees to bargain collectively through representatives of their own choosing in order to establish wages or other conditions of work.

11-4-206. Penalties.

(a)(1) Any employer who willfully hinders or delays the director or his authorized representative in the performance of his duties in the enforcement of this subsection; willfully refuses to admit the director or his authorized representative to any place of employment; willfully fails to make, keep, and preserve any records as required under the provisions of this

subchapter; willfully falsifies any such record; willfully refuses to make the record accessible to the director or his authorized representative upon demand; willfully refuses to furnish a sworn statement of the record or any other information required for the proper enforcement of this subchapter to the director or his authorized representative upon demand; willfully fails to post a summary of this subchapter or a copy of any applicable regulations as required by §11-4-216; pays or agrees to pay minimum wages at a rate less than the rate applicable under this subchapter; or otherwise willfully violates any provision of this subchapter, or of any regulation issued under this subchapter, shall be deemed in violation of this subchapter and shall, be subject to a civil penalty of not less than fifty dollars ($50.00) and not more than one thousand dollars ($1,000.) for each violation.

(2) For the purposes of this subsection, each violation shall constitute a separate offense.

(b) Any employer who willfully discharges or in any other manner willfully discriminates against any employee because the employee has made any complaint to his employer, or to the director or his authorized representative that he has not been paid minimum wages in accordance with the provisions of this subchapter or because the employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this subchapter or because the employee has testified or is about to testify in any such proceeding shall be deemed in violation of this subchapter and shall be subject to a civil penalty of not less than fifty dollars ($50.00) and not more than one thousand dollars ($1,000) for each violation.

(c) For the purposes of this section, each day the violation continues shall constitute a separate offense.

(d) The Director of the Department of Labor shall determine the amount of such penalty and shall consider the appropriateness of such penalty to the size of the business and the gravity of the violation.

(e) The determination by the director shall be final, unless within fifteen (15) days after receipt of notice thereof by certified mail, the person, firm, corporation, partnership, or association charged with the violation notifies the director in writing that he contests the proposed penalty. In the event a

penalty is contested, a final determination shall be made pursuant to the Arkansas Administrative Procedure Act, §§25-15-201 through 25-15-214.

(f) Upon a final administrative determination, the amount of such penalty may be recovered in a civil action brought by the director in a court of competent jurisdiction, without paying costs or giving bond for costs.

(g) Sums collected under this section shall be paid into the Department of Labor Special Fund.

(h) Assessment of a civil penalty by the director shall be made no later than three (3) years after the date of the occurrence of the violation.

(i) In addition to the civil penalty provided by this section, the Director of the Department of Labor is authorized to petition any court of competent jurisdiction, without paying costs or giving bond for costs, to enjoin or restrain any person, firm, corporation, partnership, or association who violates the provisions of this subchapter, or any regulation issued thereunder.

11-4-209. Director – Powers and duties.

(a) For any occupation, the director shall make and revise such administrative regulations, including definitions of terms, as he may deem appropriate to carry out the purposes of this subchapter or necessary to prevent the circumvention or evasion thereof, and to safeguard the minimum wage rates established.

(b) The regulations may include, but are not limited to, regulations governing:

(1) Outside or commission salespeople;

(2) Learners and apprentices, their number, proportion, and length of service;

(3) Part-time pay, bonuses, and fringe benefits;

(4) Special pay for special or extra work;

(5) Permitted charges to employees or allowances for board, lodging, apparel, or other facilities or services customarily furnished by employers to employees;

(6) Allowances for gratuities; and

(7) Allowances for other special conditions or circumstances which may be usual in a particular employer-employee relationship.

(c) Regulations shall be promulgated pursuant to the Arkansas Administrative Procedure Act, §§25-15-201 through 25-15-214.

(d) The director or his authorized representatives shall:

(1) Have authority to enter and inspect the place of business or employment or any employer in the state for the purpose of:

(A) Examining and inspecting any or all books, registers, payrolls, and other records of any employer that in any way relate to or have a bearing upon the question of wages, hours, and other conditions of employment of any employees;

(B) Copy any or all of the books, registers, payrolls, and other records as he may deem necessary or appropriate; and

(C) Question employees for the purpose of ascertaining whether the provisions of this subchapter and regulations issued thereunder have been and are being complied with;

(2) Have authority to require from the employer full and correct statements in writing, including sworn statements, with respect to wages, hours, names, addresses, and such information pertaining to his employees as the director or his authorized representative may deem necessary or appropriate;

(3) Publish all regulations promulgated pursuant to this subchapter; and

(4) Otherwise implement and enforce the provisions of this subchapter and the regulations issued thereunder.

11-4-210. Minimum wage.

(a)(1) Beginning July 1, 1997, every employer shall pay each of his employees wages at the rate of not less than four dollars and seventy-five cents ($4.75) per hour except as otherwise provided in this chapter.

(2) Beginning October 1, 1997, every employer shall pay each of his employees wages at the rate of not less than five dollars and fifteen cents ($5.15) per hour except as otherwise provided in this chapter.

(b) With respect to any full-time student attending any accredited institution of education within the State of Arkansas and who is employed to work an amount not to exceed twenty (20) hours during weeks that school is in session or forty (40) hours during weeks when school is not in session, the rate of wage shall be equal to but not less than eighty-five percent (85%) of the minimum wage provided for in this section.

11-4-211. Overtime.

(a) Except as otherwise provided in this section and §§11-4-210 and 11-4-212, no employer shall employ any of his employees for a work week longer than forty (40) hours unless the employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half (1 1/2) times the regular rate of pay at which he is employed.

(b) However, employees of hotels, restaurants, and tourist attractions, which have an annual sales volume of less than five hundred thousand dollars ($500,000) and which are subject to the provisions of this subchapter, shall be compensated at one and one-half (1 1/2) times the regular hourly rate of pay for all hours worked in excess of:

(1) Forty-four (44) hours in a work week beginning July 1, 1991; and

(2) Forty (40) hours in a work week beginning July 1, 1992.

(c) The provisions regarding the payment of wages at one and one-half (1 1/2) times the regular rate of pay for overtime services shall not be applicable with respect to agricultural employees.

(d) Neither the provisions of this section nor the provisions of any other law of this state shall be construed to require the payment of compensation at a greater rate than the normal rate for services performed by agricultural employees in excess of forty (40) hours per week.

11-4-212. Allowance for gratuities.

(a) Every employer of an employee engaged in any occupation in which gratuities have been customarily and usually constituted and have been recognized as part of

remuneration for hiring purposes shall be entitled to an allowance for gratuities as a part of the hourly wage rate provided in §11-4-210 in an amount not to exceed fifty percent (50%) of the minimum wage established by §11-4-210, provided that the employee actually received that amount in gratuities and that the application of the foregoing gratuity allowances results in payment of wages other than gratuities to tipped employees, including full-time students subject to the provisions of §11-4-210, of no less than fifty percent (50%) of the minimum wage prescribed by §11-4-210.

(b) In determining whether an employee received in gratuities the amount claimed, the director may require the employee to show to the satisfaction of the director that the actual amount of gratuities received by him during any workweek was less than the amount determined by the employer as the amount by which the wage paid the employee was deemed to be increased under this section.

11-4-213. Allowance for furnishing board, lodging, apparel, etc.

(a) Every employer of an employee engaged in any occupation in which board, lodging, apparel, or other items and services are customarily and regularly furnished to the employee for his benefit shall be entitled to an allowance for the reasonable value of board, lodging, apparel, or other items and services as part of the hourly wage rate provided in §11-4-210 in an amount not to exceed thirty cents (30¢) per hour.

(b) In determining whether an employee received board, lodging, apparel, or other items and services having a reasonable value of less than thirty cents (30¢) per hour during any workweek, the director may require the employee to show to the satisfaction of the director that the reasonable value of items and services received by the employee was less than the amount determined by the employer as the amount by which the wage paid the employee was deemed to be increased under this section.

11-4-214. Handicapped workers.

(a) Any person handicapped by lack of skill, age, or physical or mental deficiency or injury in any way that his

earning capacity is impaired shall be granted a temporary special exemption license or permit authorizing the employment of the person at wages lower than the minimum prescribed in this subchapter until such time as the director shall hold a hearing and prescribe regulations regarding exemption of the persons as authorized in this section.

(b)(1) The director may provide by regulation, after notice and public hearing at which any person may be heard, for the employment in any occupation of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury at wages lower than the minimum wage rate provided in §11-4-210 as he may find appropriate to prevent curtailment of opportunities for employment, to avoid undue hardship, and to safeguard the minimum wage rate under this subchapter.

(2) In addition, the director may by regulation or special order provide for the employment of handicapped clients in work activities centers under special certificates at wages which are less than the minimum prescribed in §11-4-210 which the director determines constitutes equitable compensation for the clients in work activities centers.

(c) For the purposes of this section, the term "work activities centers" shall mean centers planned and designed exclusively to provide therapeutic activities for handicapped clients whose physical and mental impairment is so severe as to make their productivity capacities inconsequential.

11-4-215. Learners, apprentices, and full-time students.

(a) For any occupation the director may provide, by regulation, after a public hearing at which any person may be heard, for the employment in the occupation of learners, apprentices, and full-time students at wages lower than the minimum wage rate provided in §11-4-210(b) as it may find appropriate to prevent curtailment of opportunities for employment and to safeguard the minimum wage rate under this subchapter.

(b) No employee shall be employed at wages fixed pursuant to this section except under special license issued under applicable regulations of the director.

11-4-216. Posting of law.

(a) Every employer subject to any provisions of this subchapter or of any regulations issued under this subchapter shall keep a summary of this subchapter, approved by the director, and copies of any applicable regulations issued under this subchapter, or a summary of the regulations approved by the director, posted in a conspicuous and accessible place in or about the premises wherein any person subject thereto is employed.

(b) Employers shall be furnished copies of the summaries of this statute and regulations by the director on request without charge.

11-4-217. Records kept by employer.

(a) Every employer subject to any provision of this subchapter or of any regulation issued under this subchapter shall make and keep for a period of not less than three (3) years in or about the premises wherein any employee is employed a record of the name, address, and occupation of each of his employees, the rate of pay and the amount paid each pay period to each employee, and such other information as the director shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this subchapter or of the regulations thereunder.

(b) The records shall be open for inspection or transcription by the director or his authorized representative at any reasonable time.

(c) Every employer shall furnish to the director or to his authorized representative on demand a sworn statement of the records and information upon forms prescribed or approved by the director.

11-4-218. Employee's remedies.

(a) Any employer who pays any employee less than minimum wages to which the employee is entitled under or by virtue of this subchapter shall be liable to the employee affected for the full amount of the wages, less any amount actually paid to the employee by the employer, and for costs and such reasonable attorney's fees as may be allowed by the court.

(b) Any agreement between the employee and employer to work for less than minimum wages shall be no defense to the action.

(c) The venue of the action shall lie in the circuit court of any county in which the services which are the subject of the employment were performed.

(d)(1) The Director of the Department of Labor shall have the authority to fully enforce this subchapter by instituting legal action to recover any wages which he determines to be due to employees under this subchapter.

(2) No legal action shall be brought by the director until after notice and opportunity for hearing pursuant to the Arkansas Administrative Procedure Act, §25-15-201 et seq., and entry of a final administrative order.

(3)(A) Following any appeals taken pursuant to the Arkansas Administrative Procedure Act, §25-15-201 et seq., the director shall be entitled to enforce his final administrative order in any court of competent jurisdiction without paying costs or giving bond for costs.

(B) The director's findings of fact shall be conclusive in any such proceeding.

11-4-219. Judicial review.

(a) Any interested person in any occupation for which any administrative regulation has been issued under the provisions of this subchapter who may be aggrieved by any regulation may obtain a review thereof in the circuit court of the county of the residence of the aggrieved party by filing in the court within twenty (20) days after the date of publication of the regulation a written petition praying that the regulation be modified or set aside.

(b) A copy of the petition shall be served upon the director.

(c)(1) The court shall review the record of the proceedings before the director, and the director's findings of fact shall be affirmed if supported by substantial evidence. The court shall determine whether the regulation is in accordance with law.

(2) If the court determines that the regulation is not in accordance with law, it shall remand the case to the director with directions to modify or revoke the regulation.

(d)(1) If application is made to the court for leave to adduce additional evidence by any aggrieved party, the party shall show to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence before the director.

(2) If the court finds that the evidence is material and that reasonable grounds exist for failure of the aggrieved party to adduce the evidence in prior proceedings, the court shall remand the case to the director with directions that the additional evidence be taken before the director.

(3) The director may modify his or her findings and conclusions, in whole or in part, by reason of the additional evidence.

(e) Hearings in the circuit court on all appeals taken under the provisions of this subchapter shall take precedence over all matters except matters of the same character. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final except that it shall be subject to review by the Supreme Court.

(f)(1) The commencement of proceedings under subsections (a)-(d) of this section shall not, unless specifically ordered by the court, operate as a stay of an administrative regulation issued under the provisions of this subchapter.

(2) The court shall not grant any stay of an administrative regulation unless the person complaining of the regulation shall file an amount in the court, undertaking with a surety satisfactory to the court, for payment to the employees affected by the regulation in the event the regulation is affirmed. The surety shall be in an amount by which the compensation the employees are entitled to receive under the regulation exceeds the compensation they actually receive while the stay is in effect.

B. WAGE AND SEX DISCRIMINATION

11-4-601. Discrimination on the basis of sex prohibited.

(a) Every employer in the state shall pay employees equal compensation for equal services, and no employer shall

discriminate against any employee in the matter of wages or compensation solely on the basis of the sex of the employee.

(b) An employer who violates or fails to comply with the provisions of this section shall be guilty of a Class C misdemeanor, and each day that the violation or failure to comply continues shall be a separate offense.

11-4-602 - 11-4-606. [Reserved.]

11-4-607. Definitions for §§11-4-608 - 11-4-612.

As used in §§11-4-608 - 11-4-612, unless the context otherwise requires:

(1)(A) "Employees" shall mean any person employed for hire in any lawful business, industry, trade, profession, or enterprise.

(B) However, it shall not include persons engaged in domestic service in the home of the employer; in agricultural service, or in temporary or seasonal employment; employees of any social club, fraternal, charitable, educational, religious, scientific, or literary association, no part of the net earnings of which inures to the benefit of any private individual;

(2) "Employer" shall include any person, natural or artificial, acting in the interest of an employer directly or indirectly;

(3) "Employment" means any employment under contract of hire, expressed or implied, written or oral.

11-4-608. Penalties for violation of §§11-4-607 - 11-4-612.

Any employer who violates any provision of §§11-4-607 - 11-4-612, or who discharges or in any other manner discriminates against any employee because the employee has made a complaint to his or her employer, the Director of the Department of Labor, or any other person, has instituted or caused to be instituted any proceedings under or related to §§11-4-607 - 11-4-612, or has testified or is about to testify in any such proceeding shall be fined not more than five hundred dollars ($500) nor imprisoned more than one (1) year, or both.

11-4-609. Administration of §§11-4-607 - 11-4-612.

The Director of the Department of Labor shall have the power and it shall be his duty to carry out and administer the provisions of §§11-4-607 - 11-4-612.

11-4-610. Wage discrimination between sexes prohibited.

(a) No employer shall discriminate in the payment of wages as between the sexes or shall pay any female in his employ salary or wage rates less than the rates paid to male employees for comparable work.

(b) Nothing in §§11-4-607 - 11-4-612 shall prohibit a variation in rates of pay based upon a difference in seniority, experience, training, skill, ability, differences in duties and services performed, difference in the shift or time of day worked, or any other reasonable differentiation except difference in sex.

11-4-611. Action to collect unpaid wages.

(a) An employer who violates the provisions of §11-4-610 shall be liable to the employee or employees affected in the amount of their unpaid wages.

(b)(1) Action to recover the wages may be maintained in any court of competent jurisdiction by any one (1) or more employees.

(2) Any agreement between the employer and the employee to work for less than the wage to which the employee is entitled under §§11-4-607 - 11-4-612 shall be no defense to the action.

(3) In addition to any wages recovered, the court in the action shall allow an additional equal amount of liquidated damages plus a reasonable attorney's fee and court costs.

(4) At the request of any employee paid less than the wage to which he or she is entitled under §§11-4-607 - 11-4-612, the Director of the Department of Labor may take an assignment of the wage claim in trust for the employee and shall bring any legal action necessary to collect the claim. The director shall not be required to pay any court costs in connection with the action.

(c) Any action to recover wages and liquidated damages based on violation of §11-4-610 must be commenced within two (2) years of the accrual thereof and not afterwards.

11-4-612. Employer to keep records.

(a) Every employer subject to §§11-4-607 - 11-4-612 shall keep and maintain records of the salaries and wage rates, job classifications, and other terms and conditions of employment of the persons employed by him, and the records shall be preserved for a period of three (3) years.

(b) The records shall also be made available to the parties and to the court wherein an action to recover unpaid wages under this subchapter is pending.

C. AGE DISCRIMINATION

21-3-201. Definition

For the purposes of this subchapter, unless the context otherwise requires, "public employer" shall mean any agency, department, board, commission, bureau, council, institution, or other entity of the state supported by appropriation of state or federal funds, or any county or municipality or other political subdivision of this state. "Public employer" specifically includes public universities, colleges, and public school districts.

21-3-202. Applicability.

The prohibitions in this subchapter shall be limited to individuals who are at least forty (40) years of age.

21-3-203. Age discrimination prohibited - Exceptions.

(a) It shall be unlawful for a public employer:

(1) To fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of the individual's age;

(2) To limit, segregate, or classify employees in any way which would deprive or tend to deprive any individual of

employment opportunities or otherwise adversely affect his status as an employee because of the individual's age; or

(3) To reduce the wage rate of any employee in order to comply with this subchapter.

(b) It shall not be unlawful for a public employer:

(1) To take any action otherwise prohibited by this subchapter where age is a bona fide occupational qualification, reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age; or

(2) To discharge or otherwise discipline an individual for good cause.

21-3-204. [Repealed.]

21-3-205. Compulsory retirement of certain employees.

(a)(1) Nothing in this subchapter shall be construed to prohibit compulsory retirement of any employee who has attained sixty-five (65) years of age, and who, for the two-year period immediately before retirement, is employed in a bona fide executive or a high policy-making position if the employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, savings, or deferred compensation plan, or any combination of such plans, of the employer of the employee, which equals, in the aggregate, at least forty-four thousand dollars ($44,000).

(2) In applying the retirement benefit test of subdivision (1) of this subsection, if any such retirement benefit is in a form other than a straight life annuity with no ancillary benefits, or if employees contribute to any such plan or make rollover contributions, that benefit shall be adjusted by the actuary of the employee's public retirement system, so that the benefit is the equivalent of a straight life annuity with no ancillary benefits under a plan to which employees do not contribute and under which no rollover contributions are made.

(b) The prohibitions of this subchapter shall apply to employees with unlimited tenure who retire after July 1, 1982.

21-3-206. [Expired.]

D. CHILD LABOR LAWS

1. Generally

11-6-101. Industrial education not prohibited.

Nothing in this subchapter shall prevent children of any age from receiving industrial education furnished by the United States, this state, or any city or town in the state and duly approved by the State Board of Education or by any other duly constituted public authority.

11-6-102. Certain children excepted from chapter.

No boy or girl between the ages of sixteen (16) years and eighteen (18) years shall be subject to the provisions of this subchapter if:

(1) The boy or girl is a graduate of any high school, vocational school, or technical school;

(2) The boy or girl is married or is a parent.

11-6-103. Penalty - Disposition of fines.

(a)(1) Any person, firm, corporation, partnership, association, parent, guardian, or custodian who employs or permits or suffers any child to be employed or to work in violation of this subchapter or §§11-12-101 - 11-12-105, or any regulations issued thereunder, shall be subject to a civil penalty of not less than fifty dollars ($50.00) and not more than one thousand dollars ($1,000) for each violation.

(2) Each day the violation continues shall with respect to each child so employed or permitted work constitute a separate offense.

(b) The Director of the Department of Labor shall determine the amount of such penalty and shall consider the appropriateness of such penalty to the size of the business and the gravity of the violation.

(c) The determination by the director shall be final, unless within fifteen (15) days after receipt of notice thereof by certified mail, the person, firm, corporation, partnership or

association charged with the violation notifies the director in writing that he or she contests the proposed penalty. In the event a penalty is contested, a final determination shall be made pursuant to the Arkansas Administrative Procedure Act, §25-15-201 et seq.

(d) The amount of such penalty when finally determined may be recovered in a civil action brought by the director in a court of competent jurisdiction, without paying costs or giving bond for costs.

(e) Sums collected under this section shall be paid into the general fund of the State Treasury.

(f) Assessment of a civil penalty by the director shall be made no later than two (2) years from the date of the occurrence of the violation.

(g) In addition to the civil penalty provided by this section, the director is authorized to petition any court of competent jurisdiction, without paying costs or giving bond for costs, to enjoin or restrain any person, firm, corporation, partnership, or association who violates the provisions of this subchapter or §§11-12-101 - 11-12-105, or any regulation issued thereunder.

11-6-104. Children under age 14 years prohibited from working - Exception.

No child under the age of fourteen (14) years shall be employed or permitted to work in any remunerative occupation in this state, except that during school vacation, children under fourteen (14) years may be employed by their parents or guardians in occupations owned or controlled by them.

11-6-105. Children under age 16 years - Restrictions on employment generally.

No child under sixteen (16) years shall be employed or permitted to work in any occupation dangerous to the life and limb, or injurious to the health and morals of the child, or in any saloon, resort, or bar where intoxicating liquors of any kind are sold or dispensed.

11-6-106. Children under age 16 years - Prohibitions against certain kinds and places of work - Exceptions.

(a)(1) No child under the age of sixteen (16) years shall be employed upon the stage of any theater or concert hall or in connection with any theatrical performance or other exhibition or show, and no child shall be employed who has not passed four (4) yearly grades in the public school or equivalent thereof.

(2) However, a child under sixteen (16) years may be employed in a theatrical production or in a saloon, resort, or bar when the child and his or her parent or guardian perform together as part of the same show and the parent or guardian remains with the child in order to supervise him or her.

(b) No child under the age of sixteen (16) years shall be employed, permitted, or suffered to work in any capacity:

(1) In, about, or in connection with any processes in which dangerous or poisonous acids or gases or other chemicals are used;

(2) In soldering;

(3) In occupations causing dust in injurious quantities;

(4) In scaffolding;

(5) In heavy work in the building trades;

(6) In any tunnel or excavation;

(7) In any mine, coal breaker, coke oven, or quarry; or

(8) In any pool or billiard room.

11-6-107. Children under age 16 years - Prohibitions against certain kinds and places of work.

(a) No child under sixteen (16) years shall be employed or permitted to work at any of the following occupations:

(1) Adjusting any belt to any machinery;

(2) Sewing or lacing machine belts in any workshop or factory;

(3) Oiling, wiping, or cleaning machinery or assisting therein;

(4) Operating or assisting in operating any of the following machines:

(A) Circular or band saws;

(B) Wood shapers;

(C) Wood jointers;

(D) Planers:

(E) Sandpaper or wood polishing machinery;

(F) Wood turning or boring machinery;

(G) Picker machines or machines used in picking wool;

(H) Carding machines;

(I) Job or cylinder printing presses operated by power other than foot power;

(J) Boring or drill presses:

(K) Stamping machines used in metal or in paper or leather manufacturing;

(L) Metal or paper cutting machines;

(M) Corner staying machines in paper box factories;

(N) Steam boilers;

(O) Dough brakes or cracker machinery of any description;

(P) Wire or iron straightening or drawing machinery;

(Q) Rolling mill machinery;

(R) Washing, grinding, or mixing machinery;

(S) Laundering machinery;

(5) In proximity to any hazardous or unguarded belt, machinery, or gearing; or

(6) Upon any railroad, whether steam, electric, or hydraulic.

(b)(1) The Director of the Arkansas Department of Labor may, from time to time after a hearing duly had, determine what other occupations are sufficiently dangerous to the life or limb or injurious to the health or morals of children under sixteen (16) years to justify their exclusion therefrom. No child under sixteen (16) years of age shall be employed or permitted to work in any occupation thus determined to be dangerous or injurious.

(2) There shall be right of appeal from any such determination pursuant to the Arkansas Administrative Procedure Act, §25-15-201 et seq.

11-6-108. Children under age 16 years - Hours of employment.

No child under the age of sixteen (16) years shall be employed, permitted, or suffered to work for more than six (6)

days in any week, nor more than forty-eight (48) hours in any week, nor more than eight (8) hours in any day or before 6:00 a.m. or after 7:00 p.m., except that on nights preceding nonschool days, children under the age of sixteen (16) years may be employed until 9:00 p.m.

11-6-109. Children under age 16 years - Employment certificate required.

(a) No person, firm, or corporation shall employ or permit any child under sixteen (16) years to work in or in connection with any establishment or occupation unless the person, firm, or corporation employing the child procures and keeps on file, accessible to the Department of Labor and the Department of Education, or local school officials, an employment certificate as provided in this section.

(b)(1) The employment certificate shall be issued only by the Director of the Department of Labor.

(2) Application for an employment certificate shall be made on a form approved by the director and shall require submission of the following:

(A) Proof of age;

(B) A description of the work and work schedule; and

(C) Written consent of the parent or guardian.

11-6-110. Children under age 18 years - Hours of employment.

No boy or girl under the age of eighteen (18) years shall be employed, permitted, or suffered to work in any occupation:

1. More than six (6) days in any week;
2. More than fifty-four (54) hours in any week;
3. More than ten (10) consecutive hours in any one (1) day;
4. More than ten (10) hours in a twenty-four-hour period; or
5. Before 6:00 a.m. or after 11:00 p.m., except that the limitations of 6:00 a.m. and 11:00 p.m. shall not apply to children under the age of eighteen (18) years employed on nights preceding nonschool days in

occupations determined by rule of the Department of Labor to be sufficiently safe for their employment.

11-6-111. Inspection of workplace - Prosecution of violators.

(a) The Director of the Department of Labor or his or her designee shall have the right to enter any building or premises for the purpose of inspection to ascertain whether any child is employed or permitted to work in violation of the provisions of this subchapter.

(b)(1) It shall be the duty of the director to enforce and administer the provisions of this subchapter.

(2) The director is authorized to adopt rules and regulations for the enforcement and administration of this subchapter.

(3) The director may revoke an employment certificate for cause.

11-6-112. Newspaper delivery work permitted.

(a) The purpose of this section is to provide children with an opportunity to develop business interests and to promote in them a spirit of thrift and industry by encouragement of their engagement in a particular situation when the child, parent, and community will be benefited and which tends to prevent juvenile delinquency.

(b)(1) A minor may be employed or may enter into contracts, upon written approval of the parent or guardian of the minor, to buy, sell, and deliver and to collect for newspapers during the school term or during vacation, if the child is attending school, as required by law, and does not engage in the employment or activity except at times when his or her presence is not required at school.

(2) The provisions of §§11-6-101 - 11-6-111, with respect to child labor, shall not be applicable with respect to the contract or employment as authorized in this section.

(c)(1) The provisions of this section shall be applicable only where the provision is made by the employer or newspaper company contractor to provide insurance or indemnity for injury to or death of the minor arising out of

bodily injury caused by an accident when the accident hazard arises while the minor is on the business of the employer or performing the activities set out in the contract.

(2)(A) The schedule of benefits under this program of insurance or indemnity shall provide at least ten thousand dollars ($10,000) for accidental death of the minor, and the sum shall be reasonably and equitably prorated for dismemberment of the minor.

(B) The insurance or indemnity shall further provide blanket medical coverage for all hospital and medical expenses up to five thousand dollars ($5,000) resulting from an accident.

(C) This hospital and medical expense protection shall be excess insurance coverage or indemnity over and above any other collectable insurance.

11-6-113. Professional baseball work as batboy or batgirl permitted.

(a) The purpose of this section is to provide children with an opportunity to develop business interests related to professional baseball and to promote in them a spirit of thrift and industry by encouragement of their engagement in a particular situation when the child, parent, and community will be benefited and which tends to prevent juvenile delinquency.

(b)(1) A minor may be employed or may enter into contracts upon, written approval of the parent or guardian of the minor, to serve as and perform the duties of a batboy or batgirl, for a professional baseball club, during the school term, or during vacation, if the child is attending school as required by law and does not engage in the employment or activity except at times when his or her presence is not required at school.

(2) The provisions of §§11-6-101 - 11-6-112, with respect to child labor, shall not be applicable with respect to the contract or employment as authorized in this section.

(c) The provisions of this section shall be applicable only where the provision is made by the employer or professional baseball club to provide insurance or indemnity for injury to or death of the minor arising out of bodily injury caused by an accident when the accident hazard arises while the minor is on

the business of the employer or performing the activities set out in the contract.

(d) No child shall be employed or permitted to work pursuant to the provisions of this section for more than ten (10) hours in any day or after 11:00 p.m. on nights preceding school days or after 1:00 a.m. on nights preceding nonschool days.

11-6-114. Seasonal agricultural labor permitted.

(a) As used in this section, "employed in agriculture" means employed as a seasonal agricultural laborer to pick, plant, harvest, grade, sort, or haul any crop, fruit, or vegetable by use of the employee's hands.

(b) Except as provided in this section, the provisions of this chapter relating to child labor, shall not apply to any employee employed in agriculture outside of school hours of the school district where such employee is living while he is so employed, if such employee is fourteen (14) years of age or older.

(c) The provisions of §§11-6-108 and 11-6-110, relating to hours of employment, shall apply to any person employed under this section.

11-6-115. Domestic labor and child care in connection with church functions permitted.

(a) As used in this section, 'domestic labor' means any occasional, irregular, or incidental work related to and in or around private residences, including, but not limited to babysitting, pet sitting, and similar household chores, and manual yard work. This definition specifically excludes industrial homework, work for a third party, such as a sitting service, and any activity determined by the Director of the Department of Labor to be hazardous pursuant to the provisions of §11-6-107(b).

(b) Except as provided in this section, the provisions of this chapter relating to child labor, shall not apply to any child employed for the purposes of domestic labor.

(c) Except as provided in this section, the provisions of §11-6-101 *et seq.,* relating to child labor, shall not apply to employees of churches performing child care services where children are cared for during short periods of time while

parents or persons in charge of the children are attending church services or functions.

11-6-116. Sports officiating permitted in certain sports.

(a) As used in this section, "employed as a sports official" means employed as an official, referee, or umpire in organized youth football, baseball, softball, basketball, or soccer leagues.

(b) Except as provided in this section, the provisions of this chapter relating to child labor shall not apply to a minor at least eleven (11) years of age employed as a sports official for an age bracket younger than the minor's own age if:

(1) An adult representing the state or local athletic program is on the premises at which the athletic program event is occurring; and

(2) A person responsible for the state or local athletic program possesses a written acknowledgment signed by the minor's parent or guardian consenting to the minor's employment as a sports official.

(c) The provisions of §§11-6-108 and 11-6-110, relating to hours of employment, shall apply to any minor employed under this section.

20-20-301. Approved chemicals - Safe reentry times.

(a) The Director of the Department of Health is authorized to establish by regulation a list of approved pesticides and other agricultural chemicals which are safe for the occupational exposure of children twelve (12) and thirteen (13) years of age employed in hand-harvesting short-season crops.

(b) The director is also authorized to establish by regulation safe re-entry times for children twelve (12) and thirteen (13) years of age so employed.

20-20-302. Assessment fees.

(a) Any employer, individual, corporation, group, or association which proposes the approval of any pesticide or other agricultural chemical for inclusion on this list shall pay the Department of Health a fee for conducting any necessary study or risk assessment.

(b) Such fee shall be established by regulation of the department and shall be deposited in the State Treasury to the Public Health Fund Account.

20-20-303. Hand-harvesting by children.

Children twelve (12) years of age and older may be employed to hand-harvest short-season crops, provided that:

(1) School is not in session;

(2) Written parental consent has been obtained by the employer;

(3) An employment certificate has been obtained from the Director of the Department of Labor pursuant to §11-6-109;

(4) No pesticide or other agricultural chemical has been used on the crop except those approved by the Department of Health pursuant to §20-20-301; and

(5) Any pesticide or other agricultural chemical used on the crop has been applied and utilized in compliance with the worker protection standards established by the federal Environmental Protection Agency and the Department of Health.

14-57-401. Penalty.

It shall be unlawful for any person, firm, or corporation to employ another, who is under the age of twenty-one (21) years, to operate or drive a taxicab or bus for hire, or otherwise, in cities of the first class in this state. Any person found guilty of a violation of this subchapter shall be guilty of a misdemeanor and shall be fined not less than twenty-five dollars ($25.00) nor more than fifty dollars ($50.00) for each offense.

14-57-402. Unlawful for minors to operate.

It shall be unlawful for any person under the age of twenty-one (21) years to operate any taxicab or bus service for hire, or otherwise, in a city of the first class in the State of Arkansas or to drive a bus or taxicab, as employee, partner, or otherwise, for another.

14-57-403. Persons not licensed.

No person who is under the age of twenty-one (21) years shall be licensed to drive a bus or taxicab for hire, or otherwise, in any city of the first class in the State of Arkansas.

14-57-404. Proof of age required.

Before anyone shall be licensed to drive a bus or taxicab in this state, satisfactory proof must be made that the applicant is twenty-one (21) years of age or over and of good moral character.

6-18-201. Compulsory attendance - Exceptions

(a) Under such penalty for noncompliance as shall be set by law, every parent, guardian, or other person residing within the State of Arkansas having custody or charge of any child age five (5) through seventeen (17) on or before September 15 of that year shall enroll and send the child to a public, private, or parochial school or provide a home school for the child, as described in § 6-15-501 et seq., with the following exceptions:

(1)(A) Any parent, guardian, or other person residing within the state and having custody or charge of any child may elect for the child not to attend kindergarten if the child will not be age six (6) on September 15 of that particular school year.

(B)(i) If an election is made, the parent, guardian, or other person having custody or charge of the child must file a signed kindergarten waiver form with the local district administrative office.

(ii) The form shall be prescribed by regulation of the Department of Education.

(C) Upon the filing of the kindergarten waiver form, the child shall not be required to attend kindergarten in that school year;

(2) Any child who has received a high school diploma or its equivalent as determined by the State Board of Education is not subject to the attendance requirement;

(3) Any child age sixteen (16) or above enrolled in a postsecondary vocational-technical institution, a community college, or a two-year or four-year institution of higher education is not subject to the attendance requirement;

(4)(A) Any child age sixteen (16) or above enrolled in an adult education program as provided for in subsection (b) of this section or in the Arkansas National Guard Youth Challenge Program is not subject to the attendance requirement.

(B) The requirements in subsection (b) of this section shall not apply to the Arkansas National Guard Youth Challenge Program; and

(5) Any child age sixteen (16) or above enrolled in an adult education program prior to June 13, 1994, under a waiver granted by the local school district who is currently attending the program is not subject to the attendance requirement.

(b) A local school district may grant a waiver of the attendance requirement to any student age sixteen (16) or seventeen (17) to enroll in an adult education program only after all of the following requirements have been met:

(1) The student makes formal application to the school district for a waiver to enroll in an adult education program;

(2)(A) After formal application and prior to any further action on the application, the student shall be administered either a test for adult basic education or a General Educational Development Practice Test under standardized testing conditions by a public school official designated by the school and shall score 8.5 grade level or above on the test for adult basic education or a minimum score of 450 on each section and a minimum composite score of 490 on the General Educational Development Practice Test.

(B) Provided, however, that the minimum test scores shall not be required of any student who is subject to the attendance requirement of this section but who was not enrolled in any school district during the previous school year;

(3) The student and the student's parents, guardians, or persons in loco parentis meet with the school counselor to discuss academic options open to the student;

(4) The school district determines that the student is a proper candidate for enrollment in adult education, contingent upon approval by the appropriate adult education program;

(5) The adult education program reviews the student's school and testing records and agrees to admit the student into the program;

(6) The adult education program shall report attendance of all sixteen-year-old and seventeen-year-old enrollees to the sending school district on at least a monthly basis;

(7)(A) The adult education program shall require for continued enrollment a minimum of twenty (20) hours per week of class attendance and instruction.

(B) Provided, however, that a minimum of ten (0) hours shall be required for any student who is employed for thirty (30) hours or more each week;

(8) The student, the student's parents, guardians, or persons in loco parentis, and the administrative head of the adult education program agree in writing that the student will attend the requisite number of hours per week and maintain appropriate conduct as outlined in the local adult education program student handbook;

(9) In the event that a more appropriate assessment test or testing and assessment mechanism shall be developed to determine a reasonable level of competency for success at the adult education level, that test or mechanism shall be substituted, with the approval of the Adult Education Section of the Department of Workforce Education, for the tests required in subdivision (b)(2) of this section;

(10) In the event that a student does not attend class as mandated in this subsection or make reasonable progress toward the completion of the adult education curriculum, the student shall reenroll in the public schools within five (5) days from the date the student is released from the adult education program; and

(11) The above requirements shall not apply to students enrolled in a private, parochial, or home school in the state.

(c) Students age sixteen (16) or seventeen (17) enrolled in a private, parochial, or home school who desire to enroll in an adult education program shall meet the following requirements:

(1)(A) Students shall apply for enrollment to the adult education program.

(B) A student enrolled in a private or parochial school shall provide a letter from the principal or administrator of the private or parochial school to verify enrollment and shall score 8.5 grade level or above on the test for adult basic education or a minimum score of 450 on each section and a

minimum composite score of 490 on the General Educational Development Practice Test.

(C) A student that is home schooled shall provide a notarized copy of the notice of intent to home school provided to the superintendent of the local school district as required by § 6-15-503;

(2) The student and the student's parents, guardians, or persons in loco parentis shall meet with the appropriate staff of the adult education program to discuss academic options open to the student;

(3) The adult education program administrators shall review the student's school and testing records prior to allowing admission to an adult education program;

(4)(A) Except as provided in subdivision (c)(4)(B) of this section, the adult education program shall require for continued enrollment a minimum of twenty (20) hours per week of class attendance and instruction.

(B) A minimum of ten (10) hours shall be required for any student who is employed for thirty (30) hours or more each week;

(5) The student, the student's parents, guardians, or persons in loco parentis, and the administrative head of the adult education program agree in writing that the student will attend the requisite number of hours per week and maintain appropriate conduct as outlined in the local adult education program student handbook;

(6) In the event that a student does not attend class as mandated in this subsection or make reasonable progress toward the completion of the adult education curriculum, the student shall reenroll in either a public, private, parochial, or home school within five (5) days from the date that the student is released from the adult education program; and

(7) If a home school student is accepted into the adult education program, the student's parent, guardian, or person standing in loco parentis shall send written notification to the local public school superintendent of his or her intent to participate in the adult education program.

(d) Students age sixteen (16) or above enrolled in a private, parochial, or home school who desire to take the

General Educational Development Test shall meet the following requirements:

(1) A student shall not be required to obtain permission or approval from any official in a public school district before being allowed to take the test;

(2) A student enrolled in a private or parochial school shall provide a letter from the principal or administrator of the private or parochial school to verify enrollment;

(3) A student enrolled in a home school shall provide a notarized copy of the notice of intent to home school provided to the superintendent of the local school district as required by § 6-15-503; and

(4) A student enrolled in a private, parochial, or home school must achieve at least the minimum official General Educational Development Practice Test scores.

(e)(1) Nothing in this section shall prohibit a public school district from continuing with an adult education program to provide educational services to sixteen-year-olds and seventeen-year-olds enrolled in public school if a contract is negotiated between the district and the adult education program that includes:

(A) Financial consideration for serving the students enrolled in the public school districts; and

(B) Accountability measures to ensure monitoring of student progress and attendance.

(2) Any contract for services by an adult education program for sixteen-year-olds and seventeen-year-olds shall be submitted to the Department of Workforce Education for final approval.

(3) Any student served by an adult education program under a contractual arrangement as described in this subsection shall not be counted in any enrollment numbers reported by the adult education programs for state or federal funding.

(f) Any child who will be six (6) years of age on or before October 1 of the school year of enrollment and who has not completed a state-accredited kindergarten program shall be evaluated by the district and may be placed in the first grade if the results of the evaluation justify placement in this first grade and the child's parent agrees with placement in the first grade. Otherwise the child shall be placed in kindergarten.

2. Employment of Children in the Entertainment Industry

11-12-101. Purpose

The General Assembly finds that the employment of minor children in the entertainment industry is necessary to create realistic theatrical, motion picture, radio, and television productions and to promote industry and economic growth. The purpose of this chapter is to provide minor children and the community with opportunities in the entertainment industry not heretofore provided.

11-12-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Director" means the Director of the Department of Labor;

(2) "Entertainment industry" means any individual, partnership, corporation, association, or group of persons using the services of a child under sixteen (16) years of age in motion picture productions, television, or radio productions, theatrical productions, modeling productions, horse shows, rodeos, and musical performances;

(3) "Employ" means to use the services of an individual in any remunerative occupation.

11-12-103. Penalty.

(a) Any person, firm, corporation, or association who violates a provision of this chapter or a lawful regulation promulgated under this chapter shall be liable for a civil penalty in accordance with the provisions of §11-6-103.

(b)(1) Any person who willfully or intentionally violates the provisions of this chapter or a lawful regulation promulgated under this chapter is guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed one thousand dollars ($1,000) or by imprisonment for not more than thirty (30) days, or by both a fine and imprisonment.

(2) Each day the violation continues shall be deemed a separate offense.

11-12-104. Restrictions on employment.

(a) A child under sixteen (16) years of age may be employed in the entertainment industry and the provisions of §§11-6-101 - 11-6-111, with respect to child labor, shall not be applicable to the employment of child actors as authorized in this chapter.

(b) No child under sixteen (16) years of age may be employed in the entertainment industry:

(1) In a role or in an environment deemed to be hazardous or detrimental to the health, morals, education, or welfare of the child as determined by the Director of the Department of Labor;

(2) Where the child is required to use a dressing room which is simultaneously occupied by an adult or by other children of the opposite sex;

(3) Where the child is not provided with a suitable place to rest or play;

(4) Where the parent or guardian of the child is prevented from being present at the scene of employment during all the times the child is working;

(5) Where the parent or guardian of the child is prevented from being within sight and sound of the child;

(6) Without a permit issued by the director and the written consent of the child's parent or guardian for the issuance of the permit.

11-12-105. Implementation and enforcement.

The Director of the Department of Labor shall have the authority to:

(1) Promulgate rules and regulations for the implementation of this chapter;

(2) Suspend or revoke a permit for the employment of a child in the entertainment industry for cause;

(3) Enter or authorize his representative to enter and inspect any place of employment where children work, rest, or play; and

(4) Otherwise enforce and implement the provisions of this chapter.

E. PREVAILING WAGE LAW

22-9-301. Payment required.

It is declared to be the policy of the State of Arkansas that a wage of not less than the minimum prevailing hourly rate of wages for work of a similar character in the county or locality in which the work is performed and not less than the prevailing hourly rate of wages for holiday and overtime work shall be paid to all workmen employed by or on behalf of any public body engaged in the construction of public works, exclusive of maintenance work.

22-9-302. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Construction" means construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair, where the cost of all labor and material exceeds seventy-five thousand dollars ($75,000);

(2) "Department" means the Arkansas Department of Labor;

(3) "Minimum prevailing wage rates" means the wages paid, generally, in the county in which the public works are being performed, to workmen engaged in work of a similar character;

(4) "County" means the county where the physical work upon the public works is performed;

(5) "Maintenance work" means the repair, but not the replacement, of existing facilities when the size, type, or extent of the existing facilities is not thereby changed or increased;

(6) "Public body" means the State of Arkansas or any officer, board, or commission of the state, any county, city, municipality or other political subdivision, or any of the agencies thereof;

(7) "Public works" means all works constructed for public use, whether or not done under public supervision or direction

or paid for wholly or in part out of public funds, but it does not include any work done for or by any drainage, improvement, or levee district;

(8) "Workmen" means laborers, workmen, and mechanics, but special rates for apprentices shall apply only when the apprentices are registered in a recognized management-labor apprenticeship training program;

(9) "Locality" means a specific county or a specific group of counties in the same geographic area of the state as determined by administrative regulation of the department.

22-9-303. Exceptions.

(a) The provisions of this subchapter shall not apply to workers who are employed as part-time or full-time employees of any public body; it is not the intent of this subchapter to prohibit any public body from performing necessary improvements of their public property, either by construction or maintenance, with public employees.

(b) Nothing contained in this subchapter shall be construed to apply to or affect highway, road, street, or bridge construction and maintenance or related work contracted for or performed by incorporated towns, cities, counties, or the Arkansas State Highway and Transportation Department.

(c) This subchapter shall not affect any public school construction unless federal matching funds are employed in paying for the construction.

22-9-304. Construction of subchapter.

(a) Nothing in this subchapter shall be construed to prohibit the payment to any worker employed on any public works of more than the prevailing rate of wages.

(b) Nothing in this subchapter shall be construed to limit the hours of work which may be performed by any worker in any particular period of time.

22-9-305. Penalties.

(a) Any officer, agent, or representative of any public body who knowingly violates, or omits to comply with, any of the provisions of this subchapter, and any contractor or

subcontractor, or agent or representative thereof, doing public works who neglects to keep an accurate record of the name, address, social security number, occupation or work classification, hours worked, and actual wages paid to each worker employed by him in connection with the public works, or who refuses to allow access to the records at any reasonable hour to any person authorized to inspect the records under this subchapter, or who knowingly submits to the department false payroll or wage information, shall be subject to a civil penalty of not less than fifty dollars ($50.00) and not more than one thousand dollars ($1,000) for each violation. Each day the violation continues shall, with respect to each employee, constitute a separate offense. In no event shall the civil penalty exceed ten percent (10%) of the contract or subcontract or ten percent (10%) of any unpaid wages due employees under the provisions of this subchapter, whichever sum is greater.

(b) Any workman who knowingly submits to the department a false claim for unpaid wages under the provisions of this subchapter shall be subject to a civil penalty of not less than fifty dollars ($50.00) and not more than one thousand dollars ($1,000).

(c)(1) The Director of the Department of Labor shall determine the amount of any civil penalty due this section.

(2)(A) Such determination shall be final, unless within fifteen (15) days after receipt of notice thereof, the workman, contractor, subcontractor, or agent or representative thereof charged with the violation notifies the Director of the Department of Labor in writing that he contests the proposed penalty.

(B) Notice of a proposed penalty shall be delivered by certified mail or by any other means authorized by law for service of process.

(3) In the event a penalty is contested, a final determination shall be made pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(4) The amount of such penalty when finally determined may be recovered in a civil action brought by the Director of the Department of Labor in a court of competent jurisdiction, without paying costs or giving bond for costs.

(d) Sums collected under this section shall be paid into the General Revenue Fund of the State Treasury.

(e) Assessment of a civil penalty by the Director of the Department of Labor shall be made no later than three (3) years from the date of the occurrence of the violation.

22-9-306. Powers of department.

(a)(1) The director or his authorized representatives shall have authority to:

(A) Administer oaths;

(B) Take, or cause to be taken, the depositions of witnesses; and

(C) Require by subpoena the attendance and testimony of witnesses and the production of all books, records, and other evidence relative to any matter under investigation or hearing.

(2) The subpoena shall be signed and issued by the department's authorized representative.

(3) In case of failure of any person to comply with any subpoena lawfully issued under this section or upon the refusal of any witness to produce evidence or to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of any circuit court or the judge thereof, upon application of the department's authorized representative, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued by the court or a refusal to testify therein.

(b) The director or his authorized representatives shall have authority to enter and inspect any construction site, place of business, or place of employment of any public body or any contractor or any subcontractor doing public works for the purpose of examining, inspecting, and copying any or all books, registers, payrolls, and other records as he may deem necessary or appropriate, and questioning employees, for the purpose of ascertaining compliance with the provisions of this subchapter and regulations issued thereunder.

(c) The director or his authorized representatives shall have authority to require from any contractor or subcontractor doing public works full and correct statements in writing, including sworn statements, with respect to wages, hours, names,

addresses, occupations, and such other information pertaining to his employees as the director or his authorized representative may deem necessary or appropriate.

(d) The authorized representative of the department shall have the power to certify to official acts.

(e)(1) The director is authorized to institute legal action in the name of the State of Arkansas, without paying costs or giving bond for costs, to recover any wages which he determines to be due to employees or workmen under this subchapter. No legal action shall be brought by the director until after notice and opportunity for hearing pursuant to the Arkansas Administrative Procedure Act (§25-15-201 et seq.) and entry of a final administrative order. Following any appeals taken pursuant to the Administrative Procedure Act, the director shall be entitled to enforce his final administrative order in any court of competent jurisdiction. The director's findings of fact shall be conclusive in any such proceeding.

(2) The director, if successful, shall be entitled to attorneys fees. Such sums shall be placed in the General Revenue Fund of the State Treasury.

(3) Nothing in this subsection shall be construed so as to relieve an unsuccessful defendant from paying costs.

(f) The director or his authorized representatives shall have the authority to:

(1) Investigate as to any violation of this subchapter and the regulations issued thereunder;

(2) Institute actions for the penalties prescribed in this subchapter;

(3) Institute legal action to recover any wages which he determines to be due to employees or workmen under this subchapter;

(4) Seek injunctive relief; and

(5) Enforce generally the provisions of this subchapter and the regulations issued thereunder.

22-9-307. Rules and regulations.

The department shall establish rules and regulations for the purpose of carrying out the provisions of this subchapter.

22-9-308. Ascertainment of minimum prevailing wage before awarding contract - Specification of wage rate – Contractor's bonds.

(a) Before any public body, excluding the Arkansas State Highway and Transportation Department, awards a contract or begins supervised construction for public works, it shall notify the department to ascertain the prevailing hourly rate of wages in the county in which the work is to be performed for each craft or type of worker needed to execute the contract or project.

(b)(1) The public body shall specify in the resolution or ordinance and in the call for bids for the contract that the minimum prevailing wage rates for each craft or type of worker and the prevailing wage rate for holiday and overtime work shall be paid.

(2) There shall be included in every specification for work coming under the provisions of this subchapter the minimum prevailing wage rates for each craft or type of worker as determined by the department, and it shall be mandatory upon the public body, if it is supervised work, or upon the contractor to whom the contract is awarded and upon any subcontractor under him, to pay not less than the specified rates to all workers employed by them in the execution of the contract.

(c) The public body awarding the contract shall cause to be inserted in the contract a stipulation to the effect that not less than the prevailing hourly rate of wages as found by the department or determined by the court on appeal shall be paid to all workers performing work under the contract.

(d) The public body awarding the contract shall require in all the contractor's bonds that the contractor include such provisions as will guarantee the faithful performance of the prevailing hourly wage clause as provided by the contract.

22-9-309. Posting of wage scale - Withholding of payments.

(a) The scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work.

(b) There may be withheld from the contractor so much of accrued payments as may be considered necessary by the

contracting officer or agency to pay to laborers and mechanics employed by the contractor or subcontractor, if any, of the work, the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to the contractor, subcontractor, or their agents.

(c) Payment for the withholding required under subsection (b) of this section shall be made upon entry of a written final administrative order by the Department of Labor directing the public body or agency to release such funds to the Department of Labor.

22-9-310. Records.

(a) The contractor and each subcontractor shall keep an accurate record showing the names, addresses, social security numbers, occupations or work classifications, and hours worked of all workers employed by them in connection with the public works, and showing the actual wages paid to each of the workers.

(b) These records shall be open at all reasonable hours to the inspection of the department or the public body awarding the contract, its officers, and agents.

(c) The contractor and each subcontractor shall, within ten (10) days after receipt of a written request from the department, the public body awarding the contract, or both, forward a certified copy of these records to the person making the request.

22-9-311. Workers receiving less than stipulated rates.

(a) Any worker employed by a public body or by a contractor or subcontractor who shall be paid for his services a sum less than the stipulated rates for work done under the contract shall have the right to file a complaint with the department for whatever differences there may be between the amount so paid and the rates provided by the contract.

(b) After investigation by the department, if the complaint is found to be just, it shall be prosecuted by the department without cost to the worker.

(c)(1) All claims shall be filed with the department not more than thirty (30) days after the certificate of substantial completion is submitted to the public body.

(2) If a claim is timely filed, a worker shall be entitled to recover any unpaid wages due over the life of the public works project, but in no event shall an action be brought more than three (3) years after the date the wages became due and owing.

(d) Nothing in this section shall be construed to limit or restrict the director's authority to seek recovery of unpaid wages pursuant to §22-9-306.

22-9-312. Termination of contractor upon failure to pay wage rate - Void contracts.

(a) Every contract within the scope of this subchapter shall contain the provision that in the event it is found by the contracting officer or public body that any laborer or mechanic employed by the public body or by the contractor or subcontractor, if any, directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid, the pubic body concerned may, by written notice to the contractor, terminate the contractor's right to proceed with the work or such part of the work as to which there has been a failure to pay the required wages and to prosecute the work to completion by contract or otherwise, and the contractor and his sureties shall be liable to the public body concerned for any excess costs occasioned thereby.

(b) Any contract made and entered into within the scope of this subchapter in violation thereof shall be void.

22-9-313. Annual determination of wage rates - Procedure.

(a)(1) The department shall investigate and determine the prevailing hourly rate of wages in the counties.

(2) Determinations shall be made annually on or about July 1, of each year and shall remain in effect until superseded by a new determination.

(3) In determining prevailing rates, the department shall ascertain and consider the applicable wage rates established by collective bargaining agreements, if any, wage determinations

by the United States Department of Labor, and such rates as are paid generally within the locality.

(b) A certified copy of the determination shall be filed immediately in the department in Little Rock, and copies shall be furnished to all persons requesting them.

(c)(1) At any time within thirty (30) days after the certified copies of the determinations have been filed with the department, any person who may be affected thereby may object in writing to the determination, or such part thereof as he deems objectionable, by filing a written notice with the department stating the specific grounds of the objection.

(2) Within thirty (30) days of the receipt of the objection, the department shall set a date for a hearing on the objection, which date shall be within sixty (60) days of the receipt of the objection.

(3) Written notice of the time and place of the hearing shall be given to the objectors and any other interested party at least ten (10) days prior to the date set for the hearing.

(4) The department, at its discretion, may hear each written objection separately or consolidate for hearing any two (2) or more written objections.

(d)(1) At the hearing, the department shall introduce in evidence the investigation it instituted and other facts which were considered at the time of the original determination and which formed the basis for its determination.

(2) The department, any objectors, or any other interested party may thereafter introduce any evidence material to the issues.

(e)(1) Within ten (10) days of the conclusion of the hearing, the department must rule on the written objections and make such final determination as it believes the evidence warrants.

(2) Immediately upon the final determination, the department shall file a certified copy of its final determination with the department and shall serve a copy of the final determination on all parties to the proceedings by personal service or by registered mail.

(f)(1) The final decision by the department concerning the prevailing wages in the county shall be subject to review by the circuit court of the county in which the determination is made,

but only if suit is started within thirty (30) days by any person who is a party thereto.

(2) All proceedings in any court affecting a determination of the department under the provisions of this subchapter shall have priority in hearing and determination over all other civil proceedings pending in the court, except election contests.

(3) The review by the circuit court shall be on the record made before the department, and the decision of the department shall be sustained if supported by substantial evidence.

(4) The finding of the department ascertaining and declaring the prevailing hourly rate of wages shall be final unless reviewed under the provisions of this section.

22-9-314. Certain contractors ineligible to bid on public works contracts - Quarterly lists.

(a)(1) Any contractor or subcontractor determined by the department to have violated the provisions of this subchapter shall be ineligible to bid on or be awarded any public works contract or to perform any construction work in any manner for any public body for a period of two (2) years from the date of the final administrative determination.

(2) Any firm, partnership, corporation or other entity in which such ineligible contractor is an officer, stockholder, or has a financial interest, or supervises or directs work shall be ineligible to bid on or be awarded any public works contract or perform any construction work in any manner for any public body for a period of two (2) years after the date of such determination.

(b) Notwithstanding the provisions of subsection (a) of this section, any contractor or subcontractor may complete any work in progress or contract awarded prior to the date of the contractor's or subcontractor's ineligibility.

(c)(1) The department shall compile a quarterly list which shall include:

(A) The names of all contractors which, by a final administrative determination, have been found to be in noncompliance with the provisions of this subchapter after January 1, 1996, and within the previous two (2) years as of the date of such list; and

(B) The dates on which the latest violations of such contractors occurred.

(2)(A) Upon request, the department shall mail such quarterly list to any public body in this state which may award public works contracts.

(B) It shall be the duty of the public body to hold such contractor ineligible to bid on or to be awarded any public works contract or to perform any construction work in any manner for the public body pursuant to subsection (a) of this section.

(d) Any contractor or subcontractor shall submit a bid, be awarded a contract, or begin performance of construction while ineligible pursuant to the provisions of this section may have its state contractor's license suspended for a period of time as set by the State Contractors Licensing Board.

(e)(1) Any public works contract awarded to an ineligible contractor, or on which an ineligible subcontractor performs, may be declared in default by the public body.

(2)(A) Additionally, the public body may require the bonding company or the general contractor to furnish a replacement contractor at no additional cost to the public body.

(B) In such an event, the bonding company or general contractor shall be expeditious in maintaining the original schedule for completion of the contract, allowing no more than thirty (30) days to lapse between notice and furnishing a replacement contractor or subcontractor satisfactory to the public body.

(f) Nothing in this section shall be construed as a waiver of sovereign immunity or as creating a cause of action for money damages against any public body.

22-9-315. Confidentiality of payroll records.

All payroll records or wage records submitted to the department pursuant to the provisions of this subchapter for the purpose of determining prevailing wage rates or determining compliance with the provisions of this subchapter and the administrative regulations issued thereunder are confidential and shall not be disclosed to any unauthorized person or be taken, or withdrawn, copied, or removed, from the custody of the department or its employees.

11-4-102. Repealed

CHAPTER 3

LAWS GOVERNING THE COLLECTION OF WAGES

Chapter 3
LAWS GOVERNING THE COLLECTION OF WAGES

A. ASSIGNMENT OF FUTURE WAGES

11-4-101. Assignment of wages.

(a) No assignment or order for wages to be earned in the future to secure a loan of less than two hundred dollars ($200) shall be valid against any employer of the person making the assignment or order until the assignment or order is accepted in writing by the employer, and the assignment or order and the acceptance of it has been filed with the recorder of the county where the party making the assignment or order resides if a resident of this state or in the state where he is employed.

(b) No assignment of or order for wages to be earned in the future shall be valid when made by a married man, unless the written consent of his wife to making such assignment or order for wages shall be attached thereto.

B. WAGE DISPUTES

11-4-301. Definition.

For the purpose of this subchapter, unless the context otherwise requires, the term “labor” shall include all or any work or service performed by any person employed for any period of time where the wages or salary or remuneration for the work or services are to be paid at stated intervals or at the termination of the employment, or for physical work actually performed by an independent contractor, provided that the amount in controversy does not exceed the sum of one thousand dollars ($1,000).

11-4-302. Act cumulative.

This subchapter is a substitute for Acts 1923, No. 380, but apart from that act is cumulative in its effect and shall not be so construed as to nullify or repeal the laws not existing with regard to liens.

11-4-303. Director of Department of Labor to conduct hearing.

(a) Upon application of either employer or employee, the Director of the Department of Labor or any person authorized by the Director shall have authority to inquire into, hear, and decide disputes arising from wages earned and shall allow or reject any deduction from wages.

(b) Upon motion of either employer or employee, the amount found to be due may be paid in the presence of the director or person designated by him, and after final hearing by the director or person appointed by him, he shall file in the office of the department a copy of findings and facts and his award.

(c) The amount of the award of the director shall be presumed to be the amount of wages, if any, due and unpaid to the employee.

11-4-304. Judicial review.

(a) If either employer or employee shall fail or refuse to accept the findings of the director, then either shall have the right to proceed at law as provided.

(b) If the claim is meritorious, and if within the discretion of the director the claimant's lack of financial ability entitles him to the services of the Department of Labor, the Director of the Department of Labor in the name of the State of Arkansas, for the benefit of the claimant, may institute action in any court of competent jurisdiction, without paying costs or giving bond for costs, and shall be entitled to all remedies available to litigants in the prosecution of actions and their enforcement, if successful.

(c) Nothing in this section shall be construed so as to relieve an unsuccessful defendant from paying costs.

11-4-305. Enforcement of laborer's lien.

(a) In all cases where the claimant is entitled to a laborer's lien or a lien on a thing or property worked on, the lien may be enforced as otherwise provided for by law, except that where a sheriff or constable is authorized to take charge of property subject to a lien claim and hold it subject to the decision of the court, as in cases of attachment, the sheriff or constable, upon

the claimant's otherwise complying with the law regarding attachments and upon the claimant's filing an affidavit with the clerk of the court that he is unable to make an attachment bond, shall take the defendant's receipt for the property described in the plaintiff's statement as required by §18-43-106, and the property shall be left in the possession of the defendant.

(b) The defendant shall exercise full dominion over the property as if it had not been attached except that he may not give it away. The defendant may sell, pledge, mortgage, or otherwise alienate or encumber the property if the proceeds therefrom bear a reasonable relation to the value of the lien, so that the person purchasing or taking an encumbrance upon the property shall possess superior rights to the lien claimant.

(c)(1) The defendant, however, selling or encumbering the property shall be held accountable to the court for the proceeds of the sale or encumbrance and shall file with the clerk of the court at the time of making the sale, or charging the property with an encumbrance, a statement giving the name of the purchaser or encumbrancer, his address, and the amount realized from the sale or encumbrance.

(2) The defendant shall also notify the plaintiff of the filing of the statement.

(d) If, upon the successful termination of the litigation in favor of the lien claimant, the defendant fails within five (5) days to pay into the registry of the court where the action was originally instituted the proceeds from the sale or encumbrance, the defendant shall be held to be in contempt of court and punished as for contempt.

11-4-306. Fees prohibited.

The Director of the Department of Labor or any person designated by him shall not charge or be permitted to accept any fees or remuneration whatsoever from any person for the performance of any duties under this subchapter.

C. PAYMENT OF WAGES

11-4-401. Payment semimonthly.

(a) Except as provided in subsection (c) of this section, all corporations doing business in this state who shall employ any

salesmen, mechanics, laborers, or other servants for the transaction of their business shall pay the wages of the employees semimonthly.

(b) Any corporation that shall, through its president or otherwise, violate subsections (a) and (c) of this section shall be deemed guilty of a misdemeanor and on conviction shall be fined in any sum not less than fifty dollars ($50.00) nor more than five hundred dollars ($500) for each offense.

(c) All corporations with an annual gross income of five hundred thousand dollars ($500,000), or more, doing business in this state who shall employ any salesmen, mechanics, laborers, or other servants for the transaction of their business shall pay the wages of their management level and executive employees who are exempt under the provisions of Section 213 of the Fair Labor Standards Act, as amended, from the provisions of Sections 206 and 207 of said act, and who are compensated at a gross rate in excess of twenty-five thousand dollars ($25,000) per year, at a minimum of once each calendar month.

11-4-402. Discount for advance payment - Payments made in currency.

(a) It shall be unlawful for any milling or manufacturing company, or any other person, corporation, or company employing persons to labor for them in the State of Arkansas, to discount the wages of their employees or laborers when payment is made or demanded before the regular paydays more than at the rate of ten percent (10%) per annum from the date of payment to the regular payday.

(b)(1)(A) All employees shall be paid in currency, or by check or electronic direct deposit into the employee's account.

(B) The employee may opt out of electronic direct deposit by providing the employer a written statement requesting payment by check.

(2) Notwithstanding any provision to the contrary, an employee has a right to be paid in currency if the employer has at any time paid the employee with a check drawn on an account with insufficient funds.

(3) This subsection (b) does not apply to any demand or claim by the Department of Labor.

(c) Any evasion or violation of this section shall be usury and a misdemeanor. The person, company, or corporation, or their agents, violating this section shall be fined in any sum not less than ten dollars ($10.00) nor more than five hundred dollars ($500), and the entire property of the person, company, or corporation shall be subject to the payment of the fine and costs.

11-4-403. Payment by evidence of indebtedness.

(a) It shall be unlawful for any corporation, company, firm, or person engaged in any trade or business in this state, either directly or indirectly, to issue, sell, give, or deliver to any person employed by the corporation, company, firm, or person, in payment of wages, whether the wages are earned or not, any scrip, token, draft, check, or other evidence of indebtedness payable or redeemable otherwise than in lawful money, at the next regular payday of the corporation, company, firm, or person.

(b) If the scrip, token, draft, check, or other evidence of indebtedness is issued, sold, given or delivered to the laborer, it shall be construed, taken, and held in all courts and places to be promise to pay the sum specified therein in lawful money by the corporation, company, firm, or person issuing, selling, giving, or delivering the same to the person named therein or the holder thereof.

(c) The corporation, company, firm, or person issuing, selling, giving, or delivering the evidence of indebtedness in violation of subsection (a) of this section shall, moreover, be guilty of a misdemeanor and upon conviction shall be fined not less than twenty-five dollars ($25.00) and not more than one hundred dollars ($100). At the discretion of the court trying the action, the officer or agent of the corporation, company, firm, or person issuing, selling, giving, or delivering the evidence of indebtedness may be imprisoned not less than ten (10) nor more than thirty (30) days.

(d) In any suit by any holder of the scrip, token, draft, check, or other evidence of indebtedness or in any prosecution under the provisions of this section, it shall not be required of the plaintiff in the suit or the state in the prosecution to prove that the scrip, token, draft, check, or other evidence of

indebtedness was sold, given, issued, or delivered by the defendant in the suit or prosecution to any laborer or employee in payment of wages of the laborer or employee.

(e) The provisions of this section do not apply to coal mines when fewer than twenty (20) men are employed under the ground.

11-4-404. Payment by sale of goods or supplies.

(a) If any corporation, company, firm, or person shall coerce or compel or attempt to coerce or compel any employee in its employment to purchase goods or supplies in payment of wages, whether the wages are earned or not, from any corporation, company, firm, or person, the first-named corporation, company, firm, or person shall be guilty of a misdemeanor and upon conviction shall be punished as provided in §11-4-403.

(b) If any corporation, company, firm, or person shall directly or indirectly sell to any employee in payment of wages, whether earned or not, goods and supplies at prices higher than a reasonable or current market value thereof in cash, the corporation, company, firm, or person shall be liable to the employee, in a civil action in double the amount of the charges made and paid for any goods and supplies in excess of the reasonable or current value in cash thereof.

(c) The provisions of this section do not apply to coal mines when fewer than twenty (20) men are employed under the ground.

11-4-405. Payment on discharge.

(a)(1) Whenever any railroad company or corporation or any receiver operating any railroad engaged in the business of operating or constructing any railroad or railroad bridge shall discharge, with or without cause, or refuse to further employ any servant or employee thereof, the unpaid wages of the servant or employee then earned at the contract rate, without abatement or deduction, shall be and become due and payable on the day of the discharge or refusal to longer employ.

(2) Any servant or employee may request of his foreman or the keeper of his time to have the money due him, or a valid check therefor, sent to any station where a regular agent is kept.

If the money or a valid check therefor does not reach the station within seven (7) days from the date it is so requested, then, as a penalty for the nonpayment, the wages of the servant or employee shall continue from the date of the discharge or refusal to further employ at the same rate until paid. However, the wages shall not continue more than sixty (60) days unless an action therefor shall be commenced within that time.

(b) This section shall apply to all companies and corporations doing business in this state and to all servants and employees thereof. Any servants or employees who shall hereafter be discharged or refused further employment may request or demand the payment of any wages due and, if not paid within seven (7) days from discharge or refusal to longer employ, than the penalties provided in subdivision (a)(2) of this section for railway employees shall attach.

(c) Any servant or employee whose employment is for a definite period of time and who is discharged without cause before the expiration of that time may, in addition to the penalties prescribed by this section, have an action against any employer for any damages he may have sustained by reason of the wrongful discharge, and the action may be joined with an action for unpaid wages and penalty.

(d) No servant or employee who secretes or absents himself to avoid payment to him, or refuses to receive payment when fully tendered, shall be entitled to any benefit under this section for the time as he so avoids payment.

D. GARNISHMENT

16-66-208. Exemptions - Wages - Penalty.

(a)(1) The wages of all laborers and mechanics, not exceeding their wages for sixty (60) days, shall be exempt from seizure by garnishment, or other legal process if the defendant in any case files, with the court from which the process is issued, a sworn statement that the sixty (60) days' wages, claimed to be exempt, is less than the amount exempt to him under the Constitution of the state, and that he does not own sufficient other personal property which, together with the sixty

(60) days' wages, would exceed in amount the limits of the constitutional exemption.

(2) The party in whose favor the garnishment has been issued, and who asserts that a claim of exemption is invalid in whole or in part, by giving five (5) days' written notice to the person claiming the exemption, shall be entitled to a hearing before the court or judge issuing the garnishment upon the question of the validity of the claim of exemption. No supersedeas shall be issued for a period of five (5) days after the claim of exemption is made in order to provide time for the party in whose favor the garnishment has been issued to request such hearing. The notice required by this section shall be served by a person authorized to serve a summons under §16-58-107, and shall be filed in the office of the judge or the clerk issuing the garnishment.

(3)(A) If the claim of exemption is not valid, either in whole or in part, then the garnishment proceedings shall be stayed only as to such amount as the court may determine.

(B) If the claim of exemption is sustained, the wages of the person claiming such exemption shall not again be seized by garnishment or other legal process, for a period of sixty (60) days.

(b)(1) The first twenty-five ($25.00) per week of the net wages of all laborers and mechanics shall be absolutely exempt from garnishment or other legal process without the necessity of the laborer or mechanic filing a schedule of exemptions as provided in subsection (a) of this section.

(2) The term "net wages" as used in this subsection shall mean gross wages less the deductions actually withheld by the employer for Arkansas income tax, federal income tax, social security, group retirement, and group hospitalization insurance premiums and group life insurance premiums.

(c) Any officer violating the provisions of this section shall be subject to fines and penalty mentioned in §16-66-214.

NOTE: For most practical purposes the above State law pertaining to restrictions on garnishment has been preempted by Federal legislation which became effective on July 1, 1970. Title III of the Consumers Credit Protection Act restricts garnishments to a maximum of 25% of an individual's wages

per week or thirty times the Federal minimum hourly wage in effect at the time the earnings are payable, or whichever is less.

16-110-414. Garnishment against railroad for certain wages after judgment.

(a) No garnishment shall be issued by any court in any cause where the sum demanded is two hundred dollars ($200) or less, and where the property sought to be reached is wages due to a defendant by any railroad corporation, until after judgment has been recovered by the plaintiff against the defendant in the action.

(b)(1) No railroad corporation shall be required to make answer to, nor shall any default or other liability attach because of its failure to answer any interrogatories propounded to it, in any action against any person to whom it may be indebted on account of wages due for personal services, where a writ of garnishment was issued in advance of the recovery by plaintiff of a personal judgment against the defendant in any action for two hundred dollars ($200) or less.

(2) Any judgment rendered against any railroad corporation for its failure or refusal to make answer to any garnishment so issued before the recovery of final judgment in the action between the plaintiff and defendant in the cases mentioned in subsection (a) of this section shall be void. Any officer entering such a judgment or who may execute or attempt to execute the judgment shall be taken and considered a trespasser.

16-110-415. Garnishment of wages.

(a) Upon the garnishment of salaries, wages, or other compensation due from the employer garnishee, the employer garnishee shall hold, to the extent of the amount due upon the judgment and costs, subject to the order of the court, any nonexempt wages due or which subsequently become due. The judgment or balance due thereon is a lien on salaries, wages, or other compensation due at the time of the service of the execution, or as set out in subsection (b) of this section.

(b) The lien provided for in subsection (a) of this section shall continue as to subsequent earnings until the total amount due upon the judgment and costs is paid or satisfied. The lien

on subsequent earnings shall terminate sooner if the employment relationship is terminated or if the underlying judgment is vacated or modified."

16-110-416. Notice to employer garnishee.

In any garnishment of salaries, wages, or other compensation due from the employer garnishee, the plaintiff shall include the following notice to the employer garnishee:

"NOTICE TO EMPLOYER GARNISHEE
The amount of wages available for withholding for this judgment and costs is subject to certain prior claims. Under Arkansas law, income withholding for child support has a priority over all other legal processes. Under federal law, the total amount to be withheld cannot exceed the maximum amount allowed under §303(b)."

16-110-417. Handling costs for withholding.

(a) A payor may withhold up to two dollars and fifty cents ($2.50) per pay period in addition to any court-ordered income withholding amount for the administrative cost incurred in each withholding.

(b) The income withholding provisions of this section shall not apply to unemployment compensation benefits except to the extent allowed pursuant to the procedures set forth in §§11-10-109 and 11-10-110.

(c) The income withholding provisions of this section shall not apply to workers' compensation benefits except to the extent allowed pursuant to the procedures set forth in §11-9-110.

CHAPTER 4

PRIVATE EMPLOYMENT AGENCIES

Chapter 4
PRIVATE EMPLOYMENT AGENCY ACT

[**NOTE:** Act 536 of 1989 abolished the Arkansas Employment Agency Advisory Council and transferred its powers, duties and functions to the Director of the Department of Labor.]

11-11-101. Recruitment of labor by foreign labor agents.

(a) No foreign labor agent, labor bureau or employment agency, or any other person shall enter this state and attempt to hire, induce, or take from this state any labor, singularly or in groups, for any purpose, whether or not a fee or charge is extracted from the worker, without first applying to the Director of the Department of Labor for a license to do so and filing with the director:

(1) A statement as to where the labor is to be taken, for what purpose, for what length of time, and whether transportation is to be paid to and from destination, if temporary;

(2) A statement of the financial standing of the employer desiring the labor;

(3) An affidavit of authority to represent the employer in this state; and

(4) Whatever other information the director may require.

(b)(1) The director shall determine whether the person desiring the labor from this state is a labor agent, labor bureau, or employment agency and, if so, whether the applicant is qualified to be licensed under the laws of this state and according to the provisions of this section.

(2) The director, after the investigation, may refuse to license or register the applicant until he has complied with the provisions of this section.

(3) The applicant shall, in the event of unfavorable action by the director, have the right to appeal to the proper court.

(c) This section is cumulative to all existing laws affecting the hiring or employment of labor.

11-11-201. Title.

This subchapter may be cited as the "Arkansas Private Employment Agency Act of 1975."

11-11-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Department" means the Department of Labor;

(2) "Director" means the Director of the Department of Labor;

(3) "Person" means any individual, company, firm, association, partnership, or corporation;

(4) "Employee" means a person performing or seeking to perform work or service of any kind or character for compensation;

(5) "Employer" means a person employing or seeking to employ a person for compensation;

(6)(A) "Employment agent" or "employment agency" means any person engaged for hire, compensation, gain, or profit in the business of furnishing persons seeking employment with information or other service enabling the persons to procure employment by or through employers or furnishing any other person who may be seeking to employ or may be in the market for help of any kind with information enabling the other person to procure help.

(B) However, "employment agent" or "employment agency" does not mean:

(i) Any person who prepares resumes for individuals for employment purposes, if the person who prepares the resumes does not refer or purport to refer prospective employees to employers or employers to prospective employees, does not represent himself or herself as an employment agency, or does not have any financial connection with any employment agency;

(ii) Any person who employs individuals to render part-time or temporary services to, for, or under the direction of a third person if the person employing the individuals, in addition to wages or salaries, pays federal social security taxes and state and federal unemployment insurance and secures work-service to, for, or under the direction of a third person;

(iii) Any bona fide nursing school, nurses' registry, management consulting firm, business school, or vocational school whose primary function and purpose is training and education, except that if such an organization charges a fee, directly or indirectly, for job placement of individuals, the organization shall be an employment agency within the meaning of this subchapter;

(iv) A labor organization;

(v) Any person who publishes advertisements placed and paid for by a third person seeking employment or an employee, provided that the person does not procure or offer to procure employment or employees;

(vi) Any person who contracts with an employer to recruit employees for the employer without charge to the prospective employee.

(7) "Agency manager" means the individual designated by the employment agency to conduct the general management, administration, and operation of a designated employment agency office. Every employment agency must maintain a licensed agency manager at each of its separate office locations;

(8) "Employment counselor" means an employee of any employment agency who interviews, counsels, or advises applicants or employers or both on employment or allied problems, or who makes or arranges contracts or contacts between employers and employees. The term "employment counselor" includes employees who solicit orders for employees from prospective employers;

(9) "Applicant" except when used to describe an applicant for an employment agency or agency manager's or counselor's license means any person, whether employed or unemployed, seeking or entering into an arrangement for employment or change of employment through the medium or service of an employment agency; and

(10) "Fee" shall mean anything of value, including any money or other valuable consideration exacted, charged, collected, or received directly or indirectly, or paid or contracted to be paid for any services or act by an employment agency.

11-11-203. Penalty.

(a) The Director of the Department of Labor shall have authority to impose a fine of not less than twenty-five dollars ($25.00) nor more than five hundred dollars ($500) for violation of the provisions of this subchapter by an employment agency or its employees or agents.

(b) The director shall notify the employment agency in writing of the reasons for imposition of a fine and at such time shall make available to the employment agency a signed written statement by any individual having filed a complaint with the director relative to the matter for which a fine has been imposed by the director.

(c) The agency shall have the right to a hearing before the director and the right to judicial review provided by §11-11-223, with respect to the fine.

11-11-204. Director and department - Powers and duties.

(a) It shall be the duty of the Department of Labor, and it shall have the power, jurisdiction, and authority to administer and enforce the provisions of this subchapter.

(b) The Director of the Department of Labor shall have the power, jurisdiction, and authority to issue licenses to employment agencies, agency managers, and counselors and to refuse to issue, revoke, or suspend such licenses when, after due investigation, and in compliance with the procedures set forth in §§11-11-221 and 11-11-222, the director finds that the applicant is for good and sufficient cause unfit to be an employment agent, agency manager, or counselor within the meaning of this subchapter or any rules, regulations, or orders lawfully promulgated under this subchapter.

(c)(1) Complaints against any person, employment agent, agency manager, or counselor may be made to the department orally or in writing.

(2) The director shall have the power to compel attendance of witnesses by issuance of subpoenas, administer oaths, direct production of documents and records, and direct taking of testimony and evidence concerning all matters within the jurisdiction of the department.

(3) The director may order testimony to be taken by deposition in any proceeding pending before the department at any stage of the proceeding.

(4) The director or his duly authorized agent shall at all reasonable times have access to, for the purpose of examination and copying, the books, records, papers, and documents of any person being investigated or proceeded against under the provisions of this subchapter, so long as the books, records, papers, or documents sought to be inspected or copied are reasonably related to the investigation or proceeding being conducted by the director.

(5) The director or his authorized agent shall, upon application of any party to proceedings before the director, issue to the party subpoenas requiring the attendance and testimony of witnesses or the production of any books, records, papers, or documents reasonably related to issues involved in proceedings before the director or investigation conducted by the director.

(6) If any person in proceedings before the director or in investigations conducted by the director disobeys or resists any lawful order or process issued by the director or his authorized agents, or fails to produce, after being lawfully directed to do so, any book, paper, record, or document, or refuses to appear and testify after being subpoenaed to do so, the director shall certify the facts to any court of competent jurisdiction in the state, or to the Circuit Court of Pulaski County.

(7) The court shall have authority to conduct hearings and punish any person for failure or refusal to testify or produce books, papers, documents, or records subpoenaed or ordered by the director as though the conduct constituted contempt of court.

(8) Witnesses summoned by the director or his authorized agent shall be paid the same fees and mileage paid to witnesses in the courts of this state.

(d)(1) The director, with the assistance and approval of the advisory council, shall have authority to prescribe such rules and regulations for the conduct of the business of private employment agencies as may be deemed necessary to carry out the provisions of this subchapter.

(2) These rules shall have the force and effect of law and shall be enforced by the director in the same manner as the provisions of this subchapter.

(3) Adoption of rules and regulations pursuant to this subsection shall be carried out in compliance with the Arkansas Administrative Procedure Act, §§25-15-201 et seq.

(e) The department shall have authority to investigate employment agents, agency managers, and counselors. The department shall have the right to examine records required by law to be kept and maintained by employment agents, agency managers, and counselors and to examine the offices where the business is or shall be conducted by them.

11-11-205. Arkansas Employment Agency Advisory Council - Creation - Members.

(a) There shall be an Arkansas Employment Agency Advisory Council composed of five (5) members appointed by the Director of the Department of Labor.

(b)(1) Each member of the council shall be of good character, a citizen of the United States, and domiciled in this state for at least one (1) year immediately preceding his appointment to the advisory council.

(2)(A) Of the appointive members, three (3) members shall have, for at least one (1) year immediately preceding their appointment, occupied executive or managerial positions in the private employment agency industry in this state.

(B) Two (2) members of the council shall represent the general public.

(c)(1) Members appointed to the advisory council shall serve terms of three (3) years.

(2) Each member of the council shall hold office until the appointment and qualification of his successor.

(d) Vacancies occurring in the membership of the council for any cause shall be filled by appointment for the balance of the unexpired term.

(e) The director may remove any member of the council for misconduct, incompetency, or neglect of duty.

(f) The director may reappoint members of the council whose terms expire as provided in this section to succeeding terms of membership on the council.

(g) Each member of the council shall serve without compensation but may receive expense reimbursement in accordance with §25-16-901 et seq.

11-11-206. Arkansas Employment Agency Advisory Council - Officers - Meetings.

(a)(1) The council may meet at least once in each calendar quarter of each year.

(2) All meetings of the council shall be open to the public, and all records of the council shall be open to inspection, except as otherwise prescribed by law.

(3) Three (3) members shall constitute a quorum for the transaction of business.

(b) The council shall elect from its members, each for a term of one (1) year, a chairman and vice-chairman and may appoint such committees as it deems necessary to carry out its duties.

(c) Any three (3) members of the council shall have authority to call meetings of the council, and the director shall also have authority to call meetings of the council.

11-11-207. Arkansas Employment Agency Advisory Council - Powers and duties.

The council shall:

(1) Inquire into the needs of the employment agency industry and make such recommendations with respect thereto as, after consideration, may be deemed important and necessary for the welfare of the state, the health and welfare of the public, and welfare and progress of the employment agency industry;

(2) Consider and make appropriate recommendations in all matters submitted to it by the director;

(3) Assist the director in collection of such information and data as the director may deem necessary to proper administration of this subchapter;

(4) Assist the director in the formulation, adoption, amendment, or repeal of any rules or regulations authorized by this subchapter. Both the director and a majority of a properly constituted quorum of the advisory council must approve any

rules or regulations, or amendments or repeals thereof, before they become effective; and

(5) Assist and advise the director regarding formulation, revision, and administration of examinations required by this subchapter.

11-11-208. License required - Penalties.

(a) No person shall engage in the business of or act as an employment agency, agency manager, or counselor unless he first obtains a license from the department.

(b)(1)(A) Any person who shall engage in the business of or act as an employment agent, agency manager, or counselor without first procuring a license is guilty of a misdemeanor.

(B) He shall be punished by a fine of not less than fifty dollars ($50.00) and not more than two hundred fifty dollars ($250) for each day of acting as an employment agent, agency manager, or counselor without a license or by imprisonment for not more than three (3) months, or by both.

(2) In addition to the penalties described in subdivision (b)(1) of this section, upon petition of the director, any court in the state having the statutory power to enjoin or restrain shall have jurisdiction to restrain and enjoin any person who engages in the business of or acts as an employment agent, agency manager, or counselor without having first procured a license for so engaging or acting.

11-11-209. Certificate of exemption required for certain organizations.

(a) Bona fide nursing schools, nurses' registries, management consulting firms, business schools, vocational schools whose primary function and purpose is training and education, and resume services shall obtain from the Director of the Department of Labor a certificate of exemption from the requirements of this subchapter.

(b) In connection with issuance of a certificate of exemption and with respect to an organization's continued eligibility for a previously issued certificate of exemption, the director shall have those investigative powers conferred by §11-11-204.

11-11-210. Employment counselor's license - Application - Qualifications

(a) To be eligible for application for an employment counselor's license, the applicant shall be:

(1) A citizen of the United States;

(2) Of good moral character;

(3) A person whose license has not been revoked within two (2) years from the date of application; and

(4) Able to demonstrate business integrity.

(b)(1) Every applicant for an initial license for employment counselor shall file with the Department of Labor a written application on a form prescribed and furnished by the Director of the Department of Labor.

(2) The applicant shall file at least two (2) letters of character reference from persons of reputed business or professional integrity.

(3) This application shall contain information prescribed by the director.

11-11-211. Agency manager license - Application - Qualifications.

(a) To be eligible to apply for a license to act as an agency manager, the applicant shall be:

(1) A citizen of the United States;

(2) Of good moral character;

(3) At least twenty-one (21) years of age;

(4) A person whose license has not been revoked within two (2) years from the date of the application;

(5) A person who has completed the twelfth grade, except that the Director of the Department of Labor may establish proof necessary to him that the applicant is possessed of a twelfth grade education in terms of intellectual competency, judgment, and achievement; and

(6) A person who demonstrates business integrity, financial responsibility, and judgment.

(b)(1) Every applicant for an initial license for agency manager shall file with the Department of Labor a written application on a form prescribed and furnished by the director.

(2) The applicant shall file at least two (2) letters of character reference from persons of reputed business or professional integrity.

(3) This application shall contain information prescribed by the director.

11-11-212. Employment agency license - Application - Qualifications.

(a) To be eligible to apply for a license to operate an employment agency, the applicant shall be:

(1) A citizen of the United States;

(2) Of good moral character;

(3) At least twenty-one (21) years of age;

(4) A person whose license has not been revoked within two (2) years from the date of the application;

(5) A person who has completed the twelfth grade, except that the Director of the Department of Labor may establish proof necessary to him that the applicant is possessed of a twelfth grade education in terms of intellectual competency, judgment, and achievement; and

(6) A person who demonstrates business integrity, financial responsibility, and judgment.

(b)(1) Every applicant for an initial employment agency license and every applicant for a renewal license shall file with the director a completed application on a form prescribed and furnished by the director.

(2)(A) The application shall be signed by the applicant and sworn to before anyone qualified by law to administer oaths.

(B) If the applicant is a corporation, the application shall state the names and home addresses of all shareholders, officers, and directors of the corporation and shall be signed and sworn to by the president, treasurer, and secretary thereof.

(C) If the applicant is a partnership, the application shall state the names and home addresses of all partners therein and shall be signed and sworn to by all of them.

(2) The applicant shall file at least two (2) letters of character reference from persons of reputed business or professional integrity.

(3) This application shall also contain such other information as the director may prescribe.

11-11-213. Employment agency license - Bond required - Action on the bond.

(a) Every application for issuance or renewal of an employment agency's license shall be accompanied by a bond in the sum of five thousand dollars ($5,000) with a duly licensed surety company or companies authorized to do business in this state.

(1) The terms and conditions of the bond shall be approved by the director.

(2) The bond shall be conditioned that the employment agency and each member, employee, shareholder, director, or officer of a person, firm, partnership, corporation, or association operating as the employment agency will not violate the provisions of this subchapter or violate rules, regulations, or orders lawfully promulgated by the director or violate the terms of any contract made by the employment agent in the conduct of its business.

(b)(1) If any person shall be aggrieved by the misconduct of any licensee, that person may maintain an action in his own name upon the bond of the employment agency in any court of competent jurisdiction or in the Circuit Court of Pulaski County.

(2) All claims shall be assignable, and the assignee shall be entitled to the same remedies upon the bond of the licensee as the person aggrieved would have been entitled to if the claim had not been assigned.

(3) Any claim so assigned may be enforced in the name of the assignee. Any remedies given by this section shall not be exclusive of any other remedy which would otherwise exist.

(c) Action on the bond required by this section may be maintained by the Director of the Department of Labor in the name of the state in any court of competent jurisdiction, or in the Circuit Court of Pulaski County, for the benefit of any person or persons aggrieved by the misconduct of the licensee.

(d)(1) If any licensee fails to file a new bond with the department within thirty (30) days after notice of cancellation by the surety of the bond required by this section, the license

issued to the principal under the bond is suspended until such time as a new surety bond is filed with and approved by the director.

(2) A person whose license is suspended pursuant to this section shall not carry on the business of an employment agency during the period of the suspension.

11-11-214. Investigation of license applicant by director.

(a) Upon filing an application for license as provided herein, the Director of the Department of Labor shall cause an investigation to be made regarding the character, business integrity, and financial responsibility of the license applicant.

(b) The director shall also determine the suitability or unsuitability of the applicant's proposed office location.

(c) An application for an employment agency's, agency manager's, or employment counselor's license shall be rejected by the director if it is found that any person named in the license application is not of good moral character, business integrity, or financial responsibility or if there is good and sufficient reason within the meaning and purpose of this subchapter for rejecting the application.

11-11-215. Employment agency license - Scope - Change of license.

(a)(1) An employment agent's license issued pursuant to this subchapter shall protect only those persons to whom it is issued and only the location for which it is issued.

(2) A separate license shall be required for each separate office location operated by an employment agency.

(3) No license shall be valid to protect any business transacted under any name other than that designated in the license.

(b) No employment agent shall permit any person not mentioned in the license or license application to become a member, officer, director, shareholder, or partner in the conduct of the business of the employment agent unless written consent of the Director of the Department of Labor and written consent of the surety on the bond required by this subchapter shall first be obtained.

(c) The location of an employment agency shall not be changed without written consent from the director, and a new license application shall be required for any change of office location in excess of twenty-five (25) miles.

(d) A charge of ten dollars ($10.00) shall be made by the Department of Labor for recording of authorization for each change of office location authorized by this section.

11-11-216. Examination for licenses.

(a)(1) Every applicant for a permanent employment agent's, permanent agency manager's, or permanent counselor's license shall, before the director issues a license to him, be required to take and successfully complete a written examination, prepared by the Director of the Department of Labor with the assistance of the advisory council. The examination shall establish the competency of the applicant to operate and conduct an employment agency or to perform service as an agency manager or counselor for the agency.

(2) No examination shall be required for renewal of any license issued pursuant to this subchapter unless the license has been suspended, revoked, or submitted late, causing the application to be treated as a new application.

(b) The Department of Labor shall hold examinations at such times and places as it shall reasonably determine, except that examinations shall be given to license applicants at least once every sixty (60) days.

(c)(1) An examination fee of five dollars ($5.00) shall be paid by each applicant in addition to the license fee.

(2) The examination fee shall be retained by the department, whether or not the applicant successfully completes the examination.

(3) The examination fee shall be forfeited if the applicant does not take the examination within three (3) months of the application date.

11-11-217. License fees.

(a) Before a permanent license shall be granted to a license applicant, an applicant shall pay the following annual fee for each license:

(1) Two hundred fifty dollars ($250) for an employment agency;

(2) Twenty-five dollars ($25.00) for an employment agency manager;

(3) Twenty dollars ($20.00) for an employment counselor.

(b) Multiple licenses for a person simultaneously performing the functions of employment agent, agency manager, or employment counselor will not be required. Such person shall procure a license commensurate with the highest level of job duties and responsibilities customarily and regularly performed by the person.

(c) All moneys received from licensing shall be deposited in the general fund of the State Treasury.

11-11-218. Temporary licenses.

(a)(1) The Director of the Department of Labor shall have authority to issue a temporary license for operation of a private employment agency, which shall be valid for no more than ninety (90) days, upon submission by the applicant, for the license of:

(A) A properly completed application form furnished and approved by the director;

(B) Submission of evidence of the applicant's compliance with the bonding requirements of this subchapter; and

(C) Payment of a temporary license fee of one hundred dollars ($100).

(2) The temporary license may be issued only if, after investigation, it reasonably appears that the applicant will meet the qualifications for a permanent private employment agency license.

(b)(1) The director shall have authority to issue temporary licenses for agency managers and employment counselors, which shall be valid for no more than ninety (90) days, upon submission by the applicant for such license of:

(A) A properly completed application form, furnished and approved by the director; and

(B) Payment of a temporary license fee of ten dollars ($10.00).

(2) The temporary licenses for agency managers and employment counselors may be issued only if, after investigation, it reasonably appears that the applicant will meet the qualifications of a permanent license as agency manager or employment counselor.

(3) Temporary licenses issued to agency managers and employment counselors are nontransferable and are automatically rescinded upon suspension or termination of the employment of the agency manager or employment counselor.

(4) The director shall approve or reject an application for a temporary agency manager's license or temporary employment counselor's license within five (5) days after receipt of a properly completed application for the license.

11-11-219. Renewal of licenses.

(a) Every license issued pursuant to this subchapter shall remain in force for one (1) year from the date of issue or until the end of the state's fiscal year, whichever occurs first, unless the license has been revoked pursuant to the provisions of this subchapter.

(b) Applications for renewal of all licenses provided by this subchapter must be filed with the Director of the Department of Labor no later than thirty (30) days prior to expiration of the license.

(c) Any licensee who fails to renew a license by the expiration date shall be automatically suspended from the right to engage in the activity authorized by the license until the license is renewed.

(d) Every application for renewal of a license must be accompanied by payment of the required license fee and evidence of compliance with the bonding requirements of this subchapter.

11-11-220. Cessation of business by licensee.

(a)(1) If an employment agent ceases business operations, the agent shall, as soon as reasonably possible, notify the Department of Labor and shall deliver, or forward by mail, the agent's license to the Department of Labor. Failure to give notice, or failure to deliver such employment agent's license, shall be a violation of §11-11-208.

(2)(A) Where one (1) or more individuals, on the basis of whose qualifications an agency license has been obtained, ceases to be connected with the licensed business for any reason whatsoever, the agency business may be carried on for a temporary period not to exceed thirty (30) days, under such terms and conditions as the Director of the Department of Labor shall provide by regulation for the orderly closing of the business or the replacement and qualification of a new member, partner, or corporate officer, director, or shareholder.

(B) The agency's authorization to continue to do business under this subchapter, beyond the thirty-day period provided in this subdivision (a)(2), shall be contingent upon approval by the director of any new member, principal, partner, officer, director, or shareholder.

(b)(1) If an agency manager terminates his employment with an employment agency by which he is employed, the agency shall notify the department, as soon as reasonably possible, to enable the department to know at all times the identity of the person charged with the general management of each of the agency's office locations.

(2) The employment agency shall also deliver, or forward by mail, the agency manager's license together with the reasons why the agency manager has terminated his position with the employment agency.

(c) If an employment counselor terminates his employment with the employment agency by which he is employed, the agency shall as soon as reasonably possible, notify the department and deliver, or forward by mail, the employment counselor's license to the department, together with the reasons for his termination.

11-11-221. Issuance, refusal, suspension, or revocation of license . Grounds.

(a) The Director of the Department of Labor shall issue a license as an employment agent, agency manager, or counselor to any person who qualifies for the license under the terms of this subchapter.

(b) The director may, in addition, refuse to issue a license to any person or may suspend or revoke the license of any employment agent, agency manager, or employment counselor

or impose administrative fines as provided for in §11-11-203, when the director finds that any of the following conditions exist:

(1) That the employment agent, agency manager, or counselor has violated any of the provisions of this subchapter;

(2) That the employment agent, agency manager, or counselor has violated any of the rules and regulations or other orders lawfully promulgated by the director;

(3) That the employment agent, agency manager, or counselor has violated the conditions of the bond required by §11-11-213;

(4) That the person, employment agent, agency manager, or employment counselor has engaged in a fraudulent, deceptive, or dishonest practice;

(5) That the person, employment agent, agency manager, or employment counselor has been legally adjudicated incompetent; or

(6) That the applicant is for good and sufficient cause unfit to be an employment agent, agency manager, or employment counselor within the meaning of this subchapter or of any of the rules and regulations or order lawfully promulgated by the director.

(c) This section and §11-11-222 shall not be construed to relieve any person from civil liability or from criminal prosecution under the provisions of this subchapter or under other laws of this state.

11-11-222. Refusal, suspension, or revocation of license - Notice and hearing.

(a)(1) The Director of the Department of Labor may not refuse to issue a license or suspend or revoke a license unless it furnishes the person, employment agent, agency manager, or employment counselor with a written statement of the charges against him and affords him an opportunity to be heard on the charges.

(2) At the time written charges are furnished to an employment agency, the director shall make available to the agency a signed written statement by any individual having filed a complaint with the director relative to the matter for which charges have been filed by the director.

(3) The agency shall be given at least twenty (20) days written notice of the date and time of the hearing. The notice shall conform to the standards for notices set forth in the Arkansas Administration Procedure Act, §25-15-201 et seq.

(4) It shall be sent by certified mail, return receipt requested, to the address of the person as shown on his application for license, or it may be served in the manner in which a summons is served in civil cases commenced in the circuit courts of this state.

(b)(1) At the time and place fixed for the hearing, the director shall hold the hearing and thereafter make his order either dismissing the charges or refusing, suspending, or revoking the license.

(2)(A) At the hearing, the accused shall have the right to appear personally and by counsel and to cross-examine witnesses against him.

(B)(i) He shall be allowed to produce evidence and witnesses in his defense and shall have the right to have witnesses subpoenaed.

(ii) The subpoenas shall be issued by the director.

(c)(1) A stenographic record of all proceedings shall be made, and a transcript of the proceedings shall be made if desired by the department or by the accused.

(2) The transcript shall be paid for by the party ordering it.

11-11-223. Judicial review of director's administrative orders.

(a) If the Director of the Department of Labor refuses to grant a license, suspends or revokes a license that has been granted, or imposes an administrative fine as provided in §§11-11-213, 11-1-221 and 11-11-222, the person adversely affected or aggrieved by the order of the director issued pursuant to the provisions of §§11-11-221 and 11-11-222 may obtain a review of the order.

(b) The order may be brought in the circuit court in the judicial district in which the violation is alleged to have occurred, where the employment agent, manager, or counselor worked, or in the Circuit Court of Pulaski County or, if the

aggrieved person is a nonresident of the state, in the Circuit Court of Pulaski County.

(c)(1) The review may be obtained by filing in the court within thirty (30) days following the issuance of the order a written petition praying that the order be modified or set aside.

(2)(A) A copy of the petition shall be forthwith transmitted by the clerk of the court to the Department of Labor.

(B) Thereupon, the department shall file in the court the record of proceedings before the department.

(d) Upon the filing, the court shall have jurisdiction of the proceedings and of the questions determined therein and shall have power to grant such temporary relief or restraining order as it deems just and proper and to make and enter upon the pleadings, testimony, and proceedings set forth in the record a decree affirming, modifying, or setting aside, in whole or in part, the order of the director and enforcing the same to the extent that the order is affirmed.

(e) Commencement of proceedings under this section shall not, unless ordered by the court, operate as a stay of the order of the director.

(f)(1) No objection which has not been urged before the director shall be considered by the court.

(2) The findings of the director with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

(g)(1) If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the director, the court may order the additional evidence to be taken before the director and made a part of the record.

(2)(A) The director may modify his findings as to the facts or make new findings, by reason of additional evidence so taken and filed, and the director shall file the modified or new findings with the court.

(B) The findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

(h) Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that it shall be subject to review by the Supreme Court.

(i)(1) The department shall certify the record of its proceedings if the party commencing the proceedings shall pay to it the cost of preparing and certifying the records, including the recording and transcribing of all testimony introduced in the proceedings.

(2) If payment of the costs of preparing and certifying the records, including the recording and transcribing of all testimony introduced in the proceedings, is not made by the party commencing the proceedings for review within ten (10) days after notice from the department of the cost of preparing and certifying the record, the circuit court in which the proceeding is pending, on the motion of the director, shall dismiss the petition.

11-11-224. Deceptive practices.

(a) No employment agent shall publish or cause to be published any fraudulent or misleading notice or advertisement of the employment agency, by means of cards, circulars, or signs or in newspapers or other publications.

(b) All letterheads, receipts, and blanks shall contain the full name and address of the employment agency, and the licensee shall state in all notices and advertisements the fact that the licensee is, or conducts, a private employment agency.

(c) No employment agency shall print, publish, or paint on any sign window or insert in any newspaper or publication a name similar to that of the Arkansas State Employment Service or any other governmental agency.

(d) No employment agency shall print or stamp on any receipt or on any contract used by the agency any part of this subchapter unless the entire section from which the part is taken is printed or stamped thereon.

(e) No employment agency shall allow any person in its employment to use any names other than their legal names in the course of, and in respect to, their employment with the agency.

(f) No employment agency or its employees or agents shall give any information, or make any representation, to any applicant, where the agency or its employees or agents know, or reasonably should know, that the information or representation is false.

(g) No employment agency or its employees or agents shall knowingly withhold from a job applicant any information material to a job to which that applicant is referred.

(h) No employment agent or its agents or employees shall engage in any conduct in the course of its business, which constitutes a fraudulent, dishonest, or deceptive practice, whether or not the conduct is prohibited by this subchapter.

(i) No contracts, forms, or schedules used by employment agencies in their dealings with the public shall contain any false, ambiguous, or misleading information.

11-11-225. Miscellaneous restrictions and requirements.

In addition to other provisions of this subchapter, the following provisions shall govern each and every employment agency.

(1) Every employment agent or agency shall display his or its license in a conspicuous place in the main office of the agency. Managers and counselors shall display their licenses in a conspicuous place in their offices or work areas;

(2)(A) All advertising by an employment agency of any form or kind shall include the words "employment agency" or "personnel agency".

(B) Advertising for an employment position with the agency itself shall clearly convey the information that the job position offered is with the employment agency publishing the advertisement;

(3) No employment agency or its agents or employees shall receive or require any applicant to execute any power of attorney, assignment of wages or salary, or note authorizing the confession of judgment;

(4) No employment agent, by himself, or by his agents or employees shall solicit, persuade, or induce any employee to leave any employment in which the employment agent or his agent has placed the employee, nor shall any employment agency or any of its agents or employees solicit, persuade, or

induce any employer to discharge any employee, nor shall any employment agent, or his agents, or employees, divide, or offer to divide or share directly or indirectly, any fee, charge, or compensation received, or to be received, from an employee with any employer or persons in any way connected with the business thereof;

(5)(A) No employment agent, by himself, or by his agents or employees shall give or promise to give anything of intrinsic value to any employer or applicant for employment as an inducement to use the services of his employment agency.

(B) No fee shall be solicited or accepted as an application or registration fee by an employment agent for the purpose of registering any person as an applicant for employment;

(6) No employment agency or its agents or employees shall advertise or make a referral for any job position without having first obtained a bona fide job order therefor;

(7) No employment agency or its agents or employees shall refer an applicant for a job or job interview unless the applicant has been personally interviewed by the employment agency or its agents or employees or has corresponded with the employment agency with the specific purpose of securing employment through that employment agency;

(8)(A) Every employment agency shall inform the public by a conspicuous sign or poster that the employment agency is subject to the requirements of this subchapter, which is administered and enforced by the Department of Labor.

(B) The department shall prepare and distribute the sign or poster to be used by agencies to comply with this subdivision (8) of this section;

(9) No employment agency or its agents or employees shall knowingly send an applicant to any place where a strike, lockout, or other labor dispute exists;

(10) No agency shall use any trade name or business identity similar to, or reasonably likely to be confused with, the trade name or business identity of an existing agency or any governmental nonprofit employment agency;

(11) No employment agency shall refer an applicant to a situation, employment, or occupation prohibited by law;

(12) No employment agency shall charge a fee to an employee for any services other than actual placement of an applicant;

(13) No employment agency shall charge an applicant a fee for accepting employment with the employment agency or any subsidiary of that agency;

(14) Any information regarding an applicant's background or credit, from whatever source obtained, shall be used for no purpose other than assisting the applicant in securing employment. However, an employment agency may use background and credit information regarding an applicant in determining whether to conduct placement services for the applicant if the applicant gives written authorization for securing the information and understands the purpose for which the information is secured;

(15) No employment agency or its agents or employees shall engage in any practice which discriminates against any person on the basis of race, color, sex, age, religion, or national origin;

(16) Under no circumstances shall more than one (1) fee for any one (1) placement be charged any applicant;

(17) No contracts, forms, or schedules used by employment agencies shall contain any provisions in conflict with the provisions of this subchapter; and

(18) All refunds due shall be made by the agency by cash, check, or money order promptly when due.

11-11-226. Designation of manager required.

(a)Every employment agency shall designate an agency manager at each office location of that agency, who shall be responsible for the general management, administration, and operation of that office location.

(b)The agency manager must comply with the licensing requirements of §§ 11-11-210 - 11-11-212, 11-11-214, 11-11-217, 11-11-218, 11-11-220(a)(1) and (b), and 11-11-226.

(c)Every employment agency must maintain an agency manager at each of its office locations.

11-11-227. Fee restrictions and requirements.

(a) Where employment lasts less than ninety (90) calendar days, regardless of the reason, no employment agency may charge an employee a fee of more than one ninetieth (1/90th) of the permanent placement fee for each calendar day of the employment. Under no circumstances shall the fee exceed twenty percent (20%) of an employee's actual gross earnings if employment lasts less than thirty (30) days or forty percent (40%) of an employee's actual gross earnings if employment lasts more than thirty (30) days but less than ninety (90) days.

(b)(1) When a promissory note is used by the agency, it shall be clearly identified as such and shall not be executed until the placement is made.

(2) The defense of no or insufficient consideration shall be good as against a holder of any such employment agency fee note.

(c)(1) Where a dispute concerning a fee exists, the Department of Labor may conduct an investigation to determine all of the facts concerning the dispute. Thereafter, the Director of the Department of Labor shall issue a decision and order resolving the dispute.

(2) Any person aggrieved by this decision and order may obtain review of this decision and order pursuant to §11-11-222.

(d)(1) Any schedule of fees to be charged by an employment agency for its services shall be furnished to all applicants upon making application with the agency.

(2)(A) The forms, fee schedules, and contracts utilized by an employment agency shall contain no ambiguous, false, or misleading information.

(B) No contract or fee schedule shall contain smaller than eight point (8 pt.) type.

(e)(1) All fee schedules used in the business of an employment agency must be furnished to job applicants and fee-paying employers and shall state in dollars and cents the amount of any fee charged by the agency for its services.

(2) Percentages shall not be used by agencies in schedules of fees to be charged for their services, except where the annual salary for a job is twelve thousand dollars ($12,000) or more.

(f) It shall be unlawful for any employment agency to impose, enforce, collect, or receive a fee for performance of any service for a job applicant, or for a prospective employer, unless the agency makes every reasonable effort to disclose the exact dollar amount of the fee to the applicant or prospective employer prior to commencement of employment of an applicant by an employer.

(g) Nothing in this section or this subchapter shall be construed to prohibit an employment agency from contracting with an employer on a fee-paid basis to pay the fee for the placement services for an employee without an actual job placement or to prohibit an agency from charging a fee to an employer for a retained services contract to search for applicants for an employer without an actual job placement.

11-11-228. Filing of fee schedule, forms, and contracts required.

(a) It shall be the duty of every employment agency to file with the Department of Labor a schedule of all fees, charges, and commissions which the agency expects to charge and collect for its service, together with a copy of all forms and contracts to be used in dealings with the public in the operation of its business.

(b) The fee schedules, contracts, and forms shall be filed with the department on the date of the agency's application for initial or renewal licensing under this subchapter.

(c) Any amendments or supplements to fee schedules, contracts, or forms filed with the department must be filed at least fifteen (15) days before the amendment or supplement is to become effective.

(d) It shall be unlawful for any employment agency to charge, demand, collect, or receive a greater compensation for any service performed by the agency than is specified in fee schedules filed with the department or than is specified by this subchapter.

11-11-229. Records required.

(a) It shall be the duty of every employment agency to keep a complete record of all orders for employees which are received from prospective employers. This record shall contain

the date when the order was received, the name and address of the employer seeking the services of an employee, the name of the individual placing the order, the duties of the position to be filled, the qualifications required of the employee, the salary or wages to be paid, and the probable duration of the job.

(b) It shall be the duty of every employment agency to keep a complete record of each applicant who is referred by the agency to an employer for a job interview. This record shall contain the date when the applicant was referred to a prospective employer for a job or interview, the name of the applicant, and the name of the firm to whom the applicant is referred.

(c)(1) It shall be the duty of every employment agency to keep a complete register called a "business transaction record", which shall consist of the name of the individual placed, the date of the placement, the name of the employer, starting date of position, starting salary, amount of fee charged, and remarks column.

(2) The remarks column will state the amount of any adjustment or refund made.

(d)(1) Prior to referral of any person to a job or interview or prior to placement of any job advertisement, an employment agency must have a current bona fide job order.

(2) It shall be the duty of every employment agency to maintain a copy of any job advertisement and the job order pertaining to any advertisement in a readily available record.

(e) All of the records listed in this section shall be kept in the employment agency office and shall be open during office hours to inspection by the Department of Labor and its duly authorized agents.

(f) No employment agent or his employee shall knowingly make any false entry or omission in the records.

B. ARKANSAS EMPLOYEE LEASING ACT

23-92-301. Short title.

This subchapter shall be known and may be cited as the "Arkansas Employee Leasing Act".

23-92-302. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Commissioner" means the Insurance Commissioner of the State of Arkansas;

(2)(A) "Employee leasing arrangement" means an arrangement, under contract or otherwise, whereby one (1) person, the employee leasing firm, assigns employees to perform services for another person, the recipient, or client, whereby:

(i) The arrangement is intended to be, or is, ongoing rather than temporary in nature; and

(ii) Employer responsibilities, including the right of direction and control of the employees, are shared by the employee leasing firm and the recipient;

(B) The term employee leasing arrangement shall not include services performed by temporary employees or by persons determined to be independent contractors with respect to the recipient;

(3)(A) "Employee leasing firm" means any person engaged in providing the services of employees pursuant to one (1) or more employee leasing arrangements;

(B) For the purposes of this subchapter, unless otherwise stated, the term "employee leasing firm" shall also mean and refer to an "employee leasing firm group".

(4) "Temporary employee" means a person employed either through another person or directly by an employer to support or supplement the existing work force in special situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects with the expectation that the worker's position will be terminated upon the completion of the task or function.

23-92-303. Commissioner - Powers and duties.

The commissioner shall have authority to prescribe such rules and regulations for the conduct of the business of employee leasing firms as may be deemed necessary to carry out the provisions of this subchapter. These rules shall have the force and effect of law and shall be enforced by the commissioner in the same manner as the provisions of this

subchapter. Adoption of rules and regulations pursuant to this subsection shall be carried out in compliance with the Arkansas Administrative Procedure Act, §25-15-201, et seq.

23-92-304. Exemptions.

The provisions of this subchapter do not apply to:

(1) A labor organization; or

(2) The State of Arkansas, any of its agencies and departments, any political subdivision of this state, or the United States, and any program or agency thereof.

23-92-305. License - Penalties.

(a)(1) No person shall engage in the business of or act as any class of employee leasing firm unless he first obtains a license from the commissioner.

(2) Two (2) or more, but not more than five (5), employee leasing firms that are corporations which are majority-owned by the same ultimate parent, entity, or persons may be licensed as an employee leasing firm group.

(A) An employee leasing firm group may satisfy the reporting and financial assurance requirements of this subchapter on a consolidated basis.

(B) As a condition of licensing as an employee leasing firm group, each company that is a member of the group shall guarantee payment of all financial obligations with respect to wages, employment taxes, and employee benefits of each other member of the group.

(b)(1) Any person who shall engage in the business of or act as an employee leasing firm without first procuring a license or otherwise violate the provisions of this subchapter or any rules or regulations promulgated by the commissioner pursuant to this subchapter shall be liable for a civil penalty for each such offense of not less than two hundred fifty dollars ($250) nor more than five thousand dollars ($5,000).

(2) In addition to the penalties described in subdivision (b)(1) of this section, the commissioner shall have the statutory power to enjoin or restrain by bringing an action in the circuit or chancery court of Pulaski County against any person who engages in the business of or acts as an employee leasing firm

without having first procured a license for so engaging or acting.

23-92-306. License - Application.

Every applicant for an initial employee leasing firm license and every applicant for a renewal license shall file with the commissioner a completed application on a form prescribed and furnished by the commissioner.

23-92-307. Employee leasing firm license - Financial assurances required.

(a)(1) Every application for issuance or renewal of a license as a class or classes of employee leasing firm pursuant to the provisions of this subchapter shall be accompanied by a surety bond issued by a corporate surety in the amount of not less than one hundred thousand dollars ($100,000).

(2) The terms and conditions of the bond shall be approved by the Insurance Commissioner.

(3) The bond shall be conditioned that the licensee and each member, employee, shareholder, or officer of a person, firm, partnership, corporation, or association operating as an agent of the licensee will not violate the provisions of this subchapter or violate rules, regulations, or orders lawfully promulgated by the commissioner pursuant to this subchapter or fail to pay any wages due under any contract made by the licensee in the conduct of its business subject to this subchapter.

(4) The bond shall secure the performance of an employee leasing firm's responsibilities to its leased employees for payment of wages.

(5)(A) The bond required by this section shall be a surety bond issued by a corporate surety or insurer authorized to do business in the State of Arkansas.

(B) In lieu of the surety bond, the employee leasing firm may deposit in a depository designated by the commissioner securities with a market value equivalent to the amount required for a surety bond. The securities so deposited shall include authorization to the commissioner to sell any such securities in an amount sufficient to pay any amounts secured by the bond or securities.

(b)(1) If any person shall be aggrieved by the misconduct of any licensee, that person may maintain an action in his own name upon the bond or policy of the employee leasing firm in any court of competent jurisdiction or in the Circuit Court of Pulaski County.

(2) All claims shall be assignable, and the assignee shall be entitled to the same remedies upon the bond of the licensee as the person aggrieved would have been entitled to if the claim had not been assigned.

(3) Any claim so assigned may be enforced in the name of the assignee. Any remedies given by this section shall not be exclusive of any other remedy which would otherwise exist.

(c) Action on the bond required by this section may be maintained by the commissioner in the name of the State of Arkansas in any court of competent jurisdiction, or in the Circuit Court of Pulaski County, for the benefit of any person or persons aggrieved by the misconduct of the licensee.

(d) If any licensee fails to file a new bond with the commissioner within thirty (30) days after notice of cancellation by the surety of the bond required by this section, the license issued to the licensee or the principal under the bond shall be deemed suspended until such time as a new surety bond is filed with and approved by the commissioner. A person whose license is suspended pursuant to this section shall not carry on the business of an employee leasing firm during the period of the suspension.

(e) In lieu of the bond requirement set forth in subsection (a) of this section, an employee leasing firm may provide a financial statement prepared by an independent certified public accountant in accordance with generally accepted accounting principles as of a date within the six (6) months prior to the date of application or renewal, which statement shows a minimum net worth of at least one hundred thousand dollars ($100,000).

(f) The commissioner may by rule and regulation exempt from all requirements of this section employee leasing firms or groups without substantial presence in this state which hold restricted licenses in good standing.

23-92-308. Investigation of applicant by commissioner.

An application for a license shall be rejected by the commissioner if it is found that any person named in the license application is not of good moral character, business integrity, or financial responsibility, or there is a good and sufficient reason within the meaning and purpose of this subchapter for rejecting the application.

23-92-309. License fees.

An applicant shall pay as an annual fee for a license a sum to be established by the commissioner, but not to exceed five thousand dollars ($5,000) per year. All such license fees shall be collected by the commissioner and shall be deposited directly into the State Insurance Department Trust Fund as special revenues for the operation, personnel, support, and maintenance of the State Insurance Department, as provided in the State Insurance Department Trust Fund Act of 1993, §23-61-701 et seq., as it is popularly known.

23-92-310. Restricted out-of-state certificate and reciprocity.

The commissioner by regulation may prescribe rules allowing employee leasing firms domiciled in other states to obtain a restricted license for limited operations within the state and to grant licenses by reciprocity.

23-92-311. Renewal of license.

(a) Every license issued pursuant to this subchapter shall remain in force for one (1) year from the date of issue, unless the license has been revoked pursuant to the provisions of this subchapter. Commencing on and after June 1, 1999, annual renewal applications shall be filed with the Insurance Commissioner by the employee leasing firms or groups no later than July 1 annually.

(b) The commissioner shall prescribe regulations setting forth the procedures for renewal of the license.

23-92-312. Issuance, refusal, suspension, or revocation of license - Grounds.

(a) The commissioner shall issue a license as an employee leasing firm to any person who qualifies for the license under the terms of this subchapter.

(b) The commissioner may, in addition, refuse to issue a license to any person or may suspend or revoke the license of any employee leasing firm or impose administrative fines as provided for in §23-92-305, when the commissioner finds that licensee or applicant has violated any of the provisions of this subchapter, the rules and regulations or other orders lawfully promulgated by the commissioner, the conditions of financial assurances required by §23-92-307, has engaged in a fraudulent, deceptive, or dishonest practice; or, for good and sufficient cause, finds the licensee or applicant unfit to be an employee leasing firm within the meaning of this subchapter or of any of the rules and regulations or orders lawfully promulgated by the commissioner.

23-92-313. Refusal, suspension, or revocation of license - Notice and hearing.

The commissioner may not refuse to issue a license or suspend or revoke a license unless it furnishes the person or employee leasing firm with a written statement of the charges against him and affords him an opportunity to be heard on the charges.

23-92-314. Deceptive practices.

The commissioner may prescribe, by regulation, those acts or omissions which shall be deemed to constitute deceptive practices under this subchapter.

23-92-315. Licensed employee leasing firms.

A licensed employee leasing firm shall be deemed an employer of its leased employees and shall perform the following employer responsibilities in conformity with all applicable federal and state laws and regulations:

(1) Pay wages and collect, report, and pay employment taxes from its own accounts;

(2) Pay unemployment taxes as required by §11-10-101 et seq.;

(3) Ensure that all of its employees are covered by workers' compensation insurance provided in conformance with the laws of this state. Such coverage may be provided through a policy or plan maintained by either the employee leasing firm or the client; provided, however, for purposes of risks insured pursuant to §23-67-201 et seq., known as the Arkansas Workers' Compensation Insurance Plan, the Insurance Commissioner is authorized to promulgate such rules and regulations as he deems necessary to assure that workers' compensation coverage is available to employees providing services for a client;

(4) Be entitled and entitle the client, together as joint employers, to the exclusivity of the remedy set forth in §11-9-105, under both the worker's compensation and employer's liability provisions of a worker's compensation policy or plan that either party has secured within the meaning of §11-9-105;

(5) Not be vicariously liable for the liabilities of the client, whether contractual or otherwise; provided that the client shall not be vicariously liable for the liabilities of the employee leasing firm, whether contractual or otherwise. Nothing herein shall limit any direct contractual liability or any joint liability between the client and the employee leasing firm;

(6) Sponsor and maintain employee benefit and welfare plans for its leased employees, provided that such plans, if limited to the employees of the employee leasing firm, shall not be deemed to be multiple employer plans or trusts within the meaning of applicable law. Nothing herein shall require an employee leasing firm to provide comparable benefits to employees located at different work sites.

23-92-316. Prohibited conduct.

(a) No employee leasing firm or other individual, association, company, firm, partnership, or corporation who leases employees may:

(1) Evade or attempt to evade the provisions of this subchapter by purporting to be the sole employer of the employees it leases:

(2) Present a proposal to enter into an employee leasing arrangement with a prospective client unless the following notice is printed in not less than 12-point bold type on the first page of the proposal:

"This proposal is intended to provide information about the general terms and conditions under which the above named firm will enter into an agreement to provide human resource outsourcing services. Information contained in this proposal does not constitute advice on legal, tax, or insurance matters. For advice on such matters, you should consult with the appropriate licensed professional.":

(3) Enter into an employee leasing arrangement without a written provision signed by the client stating that the client is responsible for ensuring with the assistance of a licensed insurance agent that any subcontractor of the client has workers' compensation coverage as required by law; or

(4) Transact insurance, as defined in §23-60-102, except through a licensed resident or nonresident insurance agent.

(b) For the purposes of this subchapter, transacting insurance shall include any of the following actions by an employee leasing firm or its representatives:

(1) Soliciting prospective clients based solely or primarily on representation of insurance cost advantages;

(2) Advising a prospective client regarding insurance coverage; or

(3) Selling a policy of insurance to a client or employee.

(c) For the purposes of this subchapter, transacting insurance shall not include any of the following actions by an employee leasing firm or its representatives:

(1) Soliciting prospective clients to enter into an employee leasing arrangement;

(2) Collecting information from a prospective client related to payroll, employee benefits, employment policies, workplace safety, and other employer responsibilities and operational experience;

(3) Evaluating collected information to ascertain the employee leasing firm's risk and cost associated with serving a prospective client's workforce;

(4) Informing a prospective client of the terms and conditions under which the employee leasing firm will enter into an employee leasing arrangement; or

(5) Performing employer responsibilities as required by §23-92-315.

CHAPTER 5

LABOR RELATIONS AND UNFAIR PRACTICES

Chapter 5
LABOR RELATIONS AND UNFAIR PRACTICES

A. GENERAL PROVISIONS AND HIRING PRACTICES

11-3-101. Soliciting advertising in name of labor organization.

(a)(1) Any person, firm, or corporation soliciting advertising in the State of Arkansas in the name of, on behalf of, or claiming to represent bona fide labor organizations shall, prior to the soliciting thereof, file with the Secretary of State a surety bond in the sum of five thousand dollars ($5,000), conditioned that they will well and truly perform any and all contracts entered into between them and any person, firm, or corporation within the state.

(2) The person, firm, or corporation shall further file with the Secretary of State credentials from the organization they represent, signed by the president and secretary and bearing the official seal of the organization.

(3) The bond shall be for the benefit of any person, firm, or corporation who has failed to receive any advertising contracted for.

(b) Any person violating the provisions of this section shall be guilty of a misdemeanor. Upon conviction, he shall be fined in any sum not less than one thousand dollars ($1,000).

11-3-201. Enticing away laborer prohibited - Penalty.

(a) If any person shall interfere with, entice away, knowingly employ, or induce a laborer who has contracted with another person for a specified time to leave his employer before the expiration of his contract without the consent of the employer, he shall, upon conviction before any justice of the peace or circuit court, be fined not less than twenty-five dollars ($25.00), nor more than five hundred dollars ($500).

(b) In addition, he shall be liable to the employer for all advances made by him to the laborer by virtue of his contract, whether verbal or written, with the laborer and for all damages which he may have sustained by reason thereof.

11-3-202. False statements or blacklists to prevent employment prohibited.

(a)(1) Every person who shall, in this state, send or deliver; make or cause to be made for the purpose of being delivered or sent; part with the possession of any paper, letter, or writing, with or without a name signed thereto; sign with a fictitious name, or with any letter, mark, or other designation; or publish or cause to be published any false statement for the purpose of preventing another person from obtaining employment in this state or elsewhere shall, upon conviction, be adjudged guilty of a misdemeanor.

(2) Every person who shall "blacklist" any person by writing, printing, or publishing or causing any of these things to be done, the name or any mark or designation representing the name of any person in any paper, pamphlet, circular, or book, together with any false statement concerning the person so named, or shall publish that anyone is a member of any secret organization, for the purpose of preventing that other person from securing employment, shall, upon conviction, be adjudged guilty of a misdemeanor.

(3) Any person who shall do any of the things mentioned in this section for the purpose of causing the discharge of any person employed by any railroad or other company, corporation, or individual shall, upon conviction, be adjudged guilty of a misdemeanor.

(b) A person convicted shall be fined in the sum of not less than one hundred dollars ($100), nor more than five hundred dollars ($500), or imprisoned in the county jail for twelve (12) months, or both fined and imprisoned.

11-3-203. Medical examination as condition of employment.

(a)(1) It shall be unlawful for any person, partnership, association, or corporation, either for himself or in a representative or fiduciary capacity, to require any employee or applicant for employment, as a condition of employment or continued employment, to submit to or take a physical or medical examination unless the examination is provided at no cost to the employee or applicant for employment and unless a true and correct copy, either original or duplicate original, of

the examiner's report of the examination is furnished free of charge to the applicant or employee.

(2) It shall further be unlawful for any person, partnership, association or corporation to require any employee or applicant for employment to pay, either directly or indirectly, any part of the cost of the examination, report, or copy of the report.

(b) Each and every violation of any provision of subsection (a) of this section shall constitute a misdemeanor, punishable by a fine in any amount not exceeding one hundred dollars ($100).

11-3-204. Providing references to prospective employers.

(a)(1) A current or former employer may disclose the following information about a current or former employee's employment history to a prospective employer of the current or former employee upon receipt of written consent from the current or former employee:

(A) Date and duration of employment;

(B) Current pay rate and wage history;

(C) Job description and duties;

(D) The last written performance evaluation prepared prior to the date of the request;

(E) Attendance information;

(F) Results of drug or alcohol tests administered within one (1) year prior to the request;

(G) Threats of violence, harassing acts, or threatening behavior related to the workplace or directed at another employee;

(H) Whether the employee was voluntarily or involuntarily separated from employment and the reasons for the separation; and

(I) Whether the employee is eligible for rehire.

(2) The current or former employer disclosing such information shall be presumed to be acting in good faith and shall be immune from civil liability for the disclosure or any consequences of such disclosure unless the presumption of good faith is rebutted upon a showing by a preponderance of the evidence that the information disclosed by the current or former employer was false, and the current or former employer

had knowledge of its falsity or acted with malice or reckless disregard for the truth.

(b)(1) The consent required in subsection (a) of this section must be on a separate form from the application form or, if included in the application form, must be in bold letters and in larger typeface than the largest typeface in the text of the application form. The consent form must state, at a minimum, language similar to the following:

"I, (applicant), hereby give consent to any and all prior employers of mine to provide information with regard to my employment with prior employers to (prospective employer)."

(2) The consent must be signed and dated by the applicant.

(3) The consent will be valid only for the length of time that the application is considered active by the prospective employer but in no event longer than six (6) months.

(c) The provisions of this section shall also apply to any current or former employee, agent, or other representative of the current or former employer who is authorized to provide and who provides information in accordance with the provisions of this section.

(d)(1) This section does not require any prospective employer to request employment history on a prospective employee and does not require any current or former employer to disclose employment history to any prospective employer.

(2) Except as specifically amended herein, the common law of this state remains unchanged as it relates to providing employment information on present and former employees.

(3) This section shall apply only to causes of action accruing on and after July 30, 1999.

(e) The immunity conferred by this section shall not apply when an employer or prospective employer discriminates or retaliates against an employee because the employee or the prospective employee has exercised or is believed to have exercised any federal or state statutory right or undertaken any action encouraged by the public policy of this state.

11-5-114. Requiring use of out-of-state mail order pharmacy.

(a) It shall be unlawful for any employer providing pharmacy services, including prescription drugs, to employees as a part of a health care program to require the employee to obtain drugs from an out-of-state mail order pharmacy as a condition of obtaining the employer's payment for the prescription drugs or to impose upon an employee not utilizing an out-of-state mail order pharmacy designated by the employer a copayment fee or other condition not imposed upon employees utilizing the designated out-of-state mail order pharmacy.

(b)(1) This section shall not apply to any employer who:

(A) Offers, as a part of a health care program, health insurance coverage to employees which provides for payment of an equal portion of the cost to the employee for prescription drugs regardless of the supplier, if the health insurance plan allows the employee freedom of choice in determining where the drugs are purchased; or

(B) Had in force effective January 1, 1987, a mail order prescription drug plan for employees.

(2) The provisions of this section shall not be applicable to health care programs in existence on March 20, 1987.

(c)(1) Any person or entity violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000).

(2) Each violation shall constitute a separate offense.

B. RIGHT TO WORK

11-3-301. Policy.

Freedom of organized labor to bargain collectively and freedom of unorganized labor to bargain individually is declared to be the public policy of the state under Arkansas Constitution, Amendment 34.

11-3-302. Enforcement

The power and duty to enforce this subchapter is conferred upon and vested in the circuit court of the county in which any person, group of persons, firm, corporation, unincorporated association, labor organization, or representatives thereof who violate this subchapter, or any part hereof, reside or have a place of business or may be found and served with process.

11-3-303. Union affiliation or nonaffiliation not to be condition of employment.

No person shall be denied employment because of membership in or affiliation with a labor union, nor shall any person be denied employment because of failure or refusal to join or affiliate with a labor union, not shall any person, unless he shall voluntarily consent in writing to do so, be compelled to pay dues or any other monetary consideration to any labor organization as a prerequisite to, condition of, or continuance of employment.

11-3-304. Contracts to exclude persons from employment prohibited.

(a) No person, group of persons, firm, corporation, association, or labor organization shall enter into any contract to exclude from employment:

(1) Persons who are members of, or affiliated with, a labor union;

(2) Persons who are not members of, or who fail or refuse to join or affiliate with, a labor union; and

(3) Persons who, having joined a labor union, have resigned their membership or have been discharged, expelled or excluded.

(b)(1) Any person group of persons, firm, corporation, association, labor organization, or representatives thereof, either for themselves or others, who sign, approve or enter into a contract contrary to the provisions of this subchapter shall be guilty of a misdemeanor. Upon conviction, he shall be fined in a sum of not less than one hundred dollars ($100), nor more than five thousand dollars ($5,000).

(2) Each day the unlawful contract is given effect, or in any manner complied with, shall be deemed a separate offense and shall be punishable as such as herein provided.

C. LABOR DISPUTES

11-3-401. Prevention of lawful employment prohibited.

(a)(1) It shall be unlawful for any person by the use, or threat of the use, of force or violence to prevent or attempt to prevent any person from engaging in any lawful vocation within this state.

(2) Any person guilty of violating this subsection shall be deemed guilty of a felony, and upon conviction shall be punished by confinement in the Department of Correction for not less than one (1) year nor more than two (2) years.

(b)(1) It shall be unlawful for any person acting in concert with one (1) or more other persons to assemble at or near any place where a labor dispute exists and by force or violence prevent or attempt to prevent any person from engaging in any lawful vocation.

(2) It shall also be unlawful for any person acting either by himself or as a member of any group or organization or acting in concert with one (1) or more other persons to promote, encourage, or aid any such unlawful assemblage.

(3) Any person guilty of violating this subsection shall be deemed guilty of a felony and upon conviction thereof shall be punished by confinement in the Department of Correction for not less than one (1) year nor more than two (2) years.

(c) The term "labor dispute" as used in this section shall include any controversy between an employer and two (2) or more of his employees concerning the terms or conditions of employment or concerning the association or representation of persons negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment.

(d) The provisions of this section shall be cumulative of all other existing criminal laws of the State of Arkansas upon the same subject, and in the event of a conflict between existing articles and the provisions of this section, then and in that event

the provisions, offenses, and punishments set forth herein shall prevail over the existing articles.

11-3-402. Interference with railroad engines and employees prohibited.

(a)Where a labor union or striking employees are picketing, or causing to be picketed, the premises or approach to the premises of any employer which is not a railroad, it shall be unlawful for any person to stand upon the track or in the way or otherwise interfere with, prevent, delay, forbid, or obstruct by force or threats the progress of any railroad engine, train, or cars operated by a railroad common carrier in the performance of its common carrier duties and moving from, to, or past the premises.

(b) Where any labor union or striking employees are picketing, or causing to be picketed, the premises or approach to the premises of an employer which is not a railroad, it shall be unlawful for any person, through intimidation, picketing, or otherwise intentionally to induce or persuade, or to seek to induce or persuade, any employees of a railroad not to enter, leave, or pass the premises with any railroad engine, train, or cars operated by a railroad in the performance of its common carrier duties.

(c) Any person who shall violate any of the provisions of this section shall upon conviction be adjudged guilty of a misdemeanor and punished by a fine not exceeding five hundred dollars ($500), or by imprisonment in the county jail for a time not to exceed six (6) months, or by both fine and imprisonment.

(d) In addition to the penalty provisions of this section, it shall be the duty of any court of competent jurisdiction at the instance of any party adversely affected by a violation of this section to enforce the provisions by restraining orders and injunction.

(e) Anyone conspiring with others to cause a violation of this section shall be liable in a civil action for damages.

D. CIVIL RIGHTS

16-123-101. Title.

This subchapter shall be referred to as the "Arkansas Civil Rights Act of 1993".

16-123-102. Definitions

For the purposes of this subchapter:

(1) "Because of gender" means, but is not limited to, on account of pregnancy, childbirth, or related medical conditions;

(2) "Compensatory damages" means damages for mental anguish, loss of dignity, and other intangible injuries, but "compensatory damages" does not include punitive damages;

(3) "Disability" means a physical or mental impairment that substantially limits a major life function, but "disability" does not include:

(A) Compulsive gambling, kleptomania, or pyromania;

(B) Current use of illegal drugs or psychoactive substance use disorders resulting from illegal use of drugs; or

(C) Alcoholism;

(4) "Employee" does not include:

(A) Any individual employed by his or her parents, spouse, or child;

(B) An individual participating in a specialized employment training program conducted by a nonprofit sheltered workshop or rehabilitation facility; or

(C) An individual employed outside the State of Arkansas;

(5) "Employer" means a person who employs nine (9) or more employees in the State of Arkansas in each of twenty (20) or more calendar weeks in the current or preceding calendar year, or any agent of such person;

(6) "National origin" includes ancestry;

(7) "Place of public resort, accommodation, assemblage, or amusement" means any place, store, or other establishment, either licensed or unlicensed, that supplies accommodations, goods, or services to the general public, or that solicits or accepts the patronage or trade of the general public, or that is supported directly or indirectly by government funds, but

"place of public resort, accommodation, assemblage, or amusement" does not include":

(A) Any lodging establishment which contains not more than five (5) rooms for rent and which is actually occupied by the proprietor of such establishment as a residence; or

(B) Any private club or other establishment not in fact open to the public; and

(8) "Religion" means all aspects of religious belief, observance, and practice.

16-123-103. Applicability.

(a) The provisions of this subchapter relating to employment shall not be applicable with respect to employment by a religious corporation, association, society, or other religious entity.

(b) It shall not constitute employment discrimination under this subchapter for an employer to refuse to accommodate the religious observance or practice of an employee or prospective employee if the employer demonstrates that he is unable to reasonably make such accommodation without undue hardship on the conduct of the employer's business.

(c) A defendant may avoid liability under this subchapter by showing that his actions were based on legitimate, nondiscriminatory factors and not on unjustified reasons.

(d) Provided the conduct at issue is based on a bona fide business judgment and is not a pretext for prohibited discrimination, nothing in this subchapter shall be construed to prohibit or restrict:

(1) An insurer, hospital, medical service company, health maintenance organization, or any agent or entity that administers benefit plans, or any bank, savings and loan, or other lender from underwriting insurance or lending risks or administering such risks that are based on or are not inconsistent with federal or state law;

(2) A person covered by this subchapter from establishing, sponsoring, observing, or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or are not inconsistent with federal or state law; or

(3) A person covered by this subchapter from establishing, sponsoring, observing, or administering the terms of a bona fide benefit plan that is not subject to federal or state laws that regulate insurance.

(e) This subchapter shall not apply to matters regulated by the Arkansas Insurance Code or the Trade Practices Act of the Arkansas Insurance Code, §23-66-201 et seq.

16-123-104. Construction.

Nothing in this subchapter shall be construed to waive the sovereign immunity of the State of Arkansas.

16-123-105. Civil rights offenses.

(a) Every person who, under color of any statute, ordinance, regulation, custom, or usage of this state or any of its political subdivisions subjects, or causes to be subjected, any person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Arkansas Constitution shall be liable to the party injured in an action at law, a suit in equity, or other proper proceeding for redress.

(b) In the discretion of the court, a party held liable under this section shall also pay the injured party's cost of litigation and a reasonable attorney's fee in an amount to be fixed by the court.

(c) When construing this section, a court may look for guidance to state and federal decisions interpreting the federal Civil Rights Act of 1871, as amended and codified in 42 U.S.C. §1983, as in effect on January 1, 1993, which decisions and act shall have persuasive authority only.

16-123-106. Hate offenses.

(a) An action for injunctive relief or civil damages, or both, shall lie for any person who is subjected to acts of:

(1) Intimidation or harassment; or

(2) Violence directed against his person; or

(3) Vandalism directed against his real or personal property, where such acts are motivated by racial, religious, or ethnic animosity.

(b) Any aggrieved party who initiates and prevails in an action authorized by this section shall be entitled to damages,

including punitive damages, and in the discretion of the court to an award of the cost of the litigation, and a reasonable attorney's fee in an amount to be fixed by the court.

(c) This section shall not apply to speech or conduct protected by the First Amendment of the United States Constitution or Article 2, §6, of the Arkansas Constitution.

16-123-107. Discrimination offenses.

(a) The right of an otherwise qualified person to be free from discrimination because of race, religion, national origin, gender, or the presence of any sensory, mental, or physical disability is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(1) The right to obtain and hold employment without discrimination;

(2) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;

(3) The right to engage in property transactions without discrimination;

(4) The right to engage in credit and other contractual transactions without discrimination; and

(5) The right to vote and participate fully in the political process.

(b) Any person who is injured by an intentional act of discrimination in violation of subdivisions (a)(2) - (5) of this section shall have a civil action in a court of competent jurisdiction to enjoin further violations, to recover compensatory and punitive damages, and, in the discretion of the court, to recover the cost of litigation and a reasonable attorney's fee.

(c)(1)(A) Any individual who is injured by employment discrimination by an employer in violation of subdivision (a)(1) of this section shall have a civil action in a court of competent jurisdiction, which may issue an order prohibiting the discriminatory practices and provide affirmative relief from the effects of the practices, and award back pay, interest on back pay, and, in the discretion of the court, the cost of litigation and a reasonable attorney's fee.

(B) No liability for back pay shall accrue from a date more than two (2) years prior to the filing of an action.

(2)(A) In addition to the remedies under subdivision (c)(1)(A) of this section, any individual who is injured by intentional discrimination by an employer in violation of subdivision (a)(1) of this section shall be entitled to recover compensatory damages and punitive damages. The total compensatory and punitive damages awarded under this subdivision (c)(2)(A) shall not exceed:

(i) The sum of fifteen thousand dollars ($15,000) in the case of an employer who employs fewer than fifteen (15) employees in each of twenty (20) or more calendar weeks in the current or preceding calendar year;

(ii) The sum of fifty thousand dollars ($50,000) in the case of an employer who employs more than fourteen (14) and fewer than one hundred one (101) employees in each of twenty (20) or more calendar weeks in the current or preceding calendar year;

(iii) The sum of one hundred thousand dollars ($100,000) in the case of an employer who employs more than one hundred (100) and fewer than two hundred one (201) employees in each of twenty (20) or more calendar weeks in the current or preceding calendar year;

(iv) The sum of two hundred thousand dollars ($200,000) in the case of an employer who employs more than two hundred (200) and fewer than five hundred one (501) employees in each of twenty (20) or more calendar weeks in the current or preceding calendar year; and

(v) The sum of three hundred thousand dollars ($300,000) in the case of an employer who employs more than five hundred (500) employees in each twenty (20) or more calendar weeks in the current or preceding calendar year.

(3) Any action based on employment discrimination in violation of subdivision (a)(1) of this section shall be brought within one (1) year after the alleged employment discrimination occurred, or within ninety (90) days of receipt of a "Right to Sue" letter or a notice of "Determination" from the United States Equal Employment Opportunity Commission concerning the alleged unlawful employment practice, whichever is later.

16-123-108. Retaliation - Interference - Remedies.

(a) RETALIATION. No person shall discriminate against any individual because such individual in good faith has opposed any act or practice made unlawful by this subchapter or because such individual in good faith made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

(b) INTERFERENCE, COERCION, OR INTIMIDATION. It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this subchapter.

(c) REMEDIES AND PROCEDURES. The remedies and procedures available in §16-123-107(b) shall be available to aggrieved persons for violations of subsections (a) and (b) of this section.

CHAPTER 6

SAFETY AND HEALTH LAWS

A. GENERAL PROVISIONS

11-5-101. Suitable temperature, humidity, and air space required.

(a) In every factory, mill, workshop, mercantile establishment, laundry, or other establishment, adequate measures shall be taken for securing and maintaining a reasonable, and as far as possible, an equable temperature consistent with the reasonable requirements of the manufacturing process.

(b) No unnecessary humidity which would jeopardize the health of employees shall be permitted.

(c) In every room, apartment, or building used as a factory, mill, workshop, mercantile establishment, laundry, or other place of employment, sufficient air space shall be provided for every employee, which in the judgment of the Director of the Department of Labor or of his deputies and inspectors is sufficient for their health and welfare.

11-5-102. Removal of gas, effluvia, and dust required.

(a) All factories, mills, workshops, mercantile establishments, laundries, and other establishments shall be kept free from gas or effluvia arising from any sewer, drain, privy, or other nuisance on the premises.

(b) All poisonous or noxious gases arising from any process and all dust which is injurious to the health of persons employed, which is created in the process of manufacturing within the above-named establishments, shall be removed as far as practicable by ventilators, exhaust fans, or other adequate devices.

11-5-103. Cleaning required.

(a) All decomposed, fetid, or putrescent matter and all refuse, waste, and sweepings of any factory, mill, workshop, mercantile establishment, laundry, or other establishment shall

be removed at least once each day and be disposed of in such manner as not to cause a nuisance.

(b) All cleaning, sweeping, and dusting shall be done as far as possible outside of working hours, but if done during working hours, shall be done in such manner as to avoid, as far as possible, the raising of dust and noxious odors.

11-5-104. Wet floors - Certain precautions required.

(a) In all establishments where any process is carried on which makes the floors wet, the floors shall be constructed and maintained with due regard for the health of the employees.

(b) Gratings or dry standing room shall be provided wherever practicable at points where employees are regularly stationed.

(c) Adequate means shall be provided for drainage and for the prevention of leakage or seepage to lower floors.

11-5-105. Safe doors, stairways, and elevators required.

(a) All doors used by employees as entrances to or exits from factories, mills, workshops, mercantile establishments, laundries, or other establishments of a height of two (2) stories or over shall open outward and shall be so constructed as to be easily and immediately opened from within in case of fire or other emergencies.

(b) Proper and substantial hand rails shall be provided on all stairways.

(c) Lights shall be kept burning at all main stairs, stair landings, and elevator shafts in the absence of sufficient natural light.

(d) The provisions of this section shall not apply to any mercantile establishments having less than three (3) female employees.

11-5-106. Repealed.

11-5-107. Inspection of working place - Findings.

(a) The Director of the Department of Labor or any of his deputies or inspectors shall have the right to enter any factory, mill, workshop, mercantile establishment, laundry, or other establishment where three (3) or more persons are employed

for the purpose of making inspections and enforcing the provisions of §§11-5-101 - 11-5-111.

(b) They are empowered upon finding any violation of §§11-5-101 - 11-5-111 by reason of unsanitary conditions which will endanger the health of the employees therein employed, by reason of neglect to remove and prevent fumes and gases or odor injurious to employees, by reason of the failure or refusal to comply with any requirement of §§11-5-101 - 11-5-111, or by reason of the inadequacy or insufficiency of any plan, method, practice, or device employed in assumed compliance with any of the requirements of §§11-5-101 - 11-5-111 to pass upon and to make a written finding as to the failure or refusal to comply with any requirement of §§11-5-101 - 11-5-111, or as to adequacy or sufficiency of any practice, plan, or method used in or about any place mentioned in §§11-5-101 - 11-5-111 in supposed compliance with any of the requirements of §§11-5-101 - 11-5-111.

11-5-108. Order to correct conditions - Issuance.

(a) The Director of the Department of Labor, or any of his deputies or inspectors, may issue a written order to the owner, manager, superintendent, or other person in control or management of the place or establishment for the correction of any condition caused or permitted in or about the place or establishment in violation of any of the requirements of §§11-5-101 - 11-5-111, or of any condition, practice, plan, or method used therein or thereabouts in supposed compliance with any requirement of §§11-5-101 - 11-5-111, but which are found to be inadequate or insufficient, in any respect, to comply therewith, and shall state in the order how the conditions, practices, plans, or methods, in any case, shall be corrected and the time within which they shall be corrected, a reasonable time being given in the order therefor.

(b) One (1) copy of the order shall be delivered to the owner, manager, superintendent, or other person in control or management of the place or establishment, and one (1) copy shall be filed in the Office of the Department of Labor.

11-5-109. Order to correct conditions - Conclusiveness - Action to set aside.

(a) The findings and orders shall be prima facie valid, reasonable, and just and shall be conclusive unless attacked and set aside in the manner provided in subsections (b) and (c) of this section.

(b)(1) The owner or owners, manager, superintendent, or other person in control or management of any place or establishment covered by this law, and directly affected by any finding or order provided for in §§11-5-107 and 11-5-108, may, within fifteen (15) days from the date of the delivery to him or them of a copy of the order as provided for in §§11-5-107 and 11-5-108, file a petition setting forth the particular cause of objection to the order and findings in a court of competent jurisdiction against the Director of the Department of Labor.

(2) The action shall have precedence over all other causes of a different nature and shall be tried and determined as other civil causes in the court.

(3) If the court is in session at the time the cause of action arises, the suit may be filed during the term and stand ready for trial after ten (10) days' notice.

(c)(1) Either party may appeal but shall not have the right to sue out a writ of error from the trial court.

(2) The appeal shall at once be returnable to the proper appellate court at either of its terms and shall have precedence in the appellate court over other causes of a different nature.

(d) In any trial under this section, the burden shall be upon the plaintiff to show that the findings and order complained of are illegal, unreasonable or unjust to it or them.

11-5-110. Order to correct conditions - Penalties for noncompliance.

(a) Upon the failure or refusal of the owner, manager, superintendent, or other person in control or management of a place or establishment, to comply with an order issued pursuant to §11-5-108 within the time therein specified, unless it has been attacked and suspended or set aside as provided for in §11-5-109, the Director of the Department of Labor or his deputy or inspectors shall have full authority and power to

close the place or establishment, or any part of it that may be in an unsanitary or dangerous condition or contain immoral influences in violation of any requirement of §§11-5-101 - 11-5-110 or order, until such time as the condition, practice, or method is corrected.

(b) Any person in control or management of any establishment included in §11-5-109 who shall fail or refuse to comply with any written order issued to the person by the director or any of his deputies or inspectors, for the correction of any condition caused or permitted therein which endangers the health of the employees therein or which does not comply with the law governing those establishments, shall be punished as provided in §11-5-111.

11-5-111. Penalty for violation of §§11-5-101 - 11-5-110.

(a) Any employer violating the provisions of §§11-5-101 - 11-5-110 shall be deemed guilty of a misdemeanor.

(b)(1) Upon conviction the employer shall be fined not less than fifty dollars ($50.00) nor more than one hundred dollars ($100).

(2) Each day's violation shall constitute a separate offense and shall be punished as such.

11-5-112. Separate lunchrooms and toilet rooms for males and females required.

(a) There shall be provided in every factory, manufacturing establishment, workshop, or other place where six (6) or more males and females are employed separate toilets and washrooms for males and females.

(b)(1) The Director of the Department of Labor shall enforce the provisions of this section and shall give notice in writing to employers violating it.

(2) Upon failure to comply with the provisions of this section after thirty (30) days from the notice, the employers shall be liable to penalties provided in subsection (c) of this section.

(c)(1) Any firm, person, or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than ten dollars $10.00) nor more than one hundred dollars ($100).

(2) Each day shall constitute a separate offense.

(d) This section shall not repeal any laws now in force but shall be cumulative thereto.

B. INDUSTRIAL HEALTH SERVICE ACT

11-5-201. Title.

This subchapter shall be cited as the "Industrial Health Service Act of 1947."

11-5-202. Exception.

Nothing in this subchapter shall be construed as applying to the coal mining industry.

11-5-203. Penalty.

(a)(1) Any person, firm, or corporation who shall neglect or refuse to comply with the provisions of this subchapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than ten dollars ($10.00) nor more than one hundred dollars ($100) for each offense.

(2) Each day any employer neglects or refuses to comply with the provisions of this subchapter shall constitute a separate offense.

(b) It shall be the duty of the prosecuting attorney to prosecute violations of this subchapter.

11-5-204. Division of Industrial Hygiene - Creation - Duties.

(a) The Division of Industrial Hygiene is established as one of the offices over which the State Board of Health maintains supervision.

(b) The division shall investigate places of employment and study those conditions which might be responsible for ill health of the industrial worker.

11-5-205. State Board of Health - Rules and regulations.

It shall be the duty of the State Board of Health to adopt rules and regulations pertaining to the control of industrial health hazards, including and concerning the maximum allowable limits of materials, ventilation requirements, water supplies, excreta disposal facilities, washing and shower

facilities, and other matters pertaining to the maintenance of the health of the worker.

11-5-206. Director of Department of Health - Access to certain buildings.

The Director of the Department of Health or his or her duly authorized deputy shall have access to any firm, corporation, industry, or manufacturing plant for the proper discharge of his or her official duties.

11-5-207. Use of injurious material, process, or condition prohibited.

(a) It shall be a violation of this subchapter for any employer to use or permit to be used in the conduct of his business, manufacturing establishment, or other place of employment any material, process, or condition known to have an adverse effect on health.

(b) However, that material, process, or condition may be used when it is operated, handled, or used in such a manner that injury to the health of the worker will not occur.

(c) It shall be the duty of the Division of Industrial Hygiene to evaluate and determine whether the material, process, or condition is being operated, handled, or used in such a manner that injury to the health of the worker will not occur.

11-5-208. Use of information from studies or investigations.

(a) Information obtained from studies or upon investigations made in accordance with the provisions of this subchapter shall not be admissible as evidence in any action at law to recover damages for personal injury or in any action under the Workers' Compensation Law, §11-9-101 et seq.

(b) By mutual agreement between the Division of Industrial Hygiene and those charged with the administration of the Workers' Compensation Law, §11-9-101 et seq., studies at the request of the latter may be instituted in industries, and the results of these studies may be reported to the administrators.

C. BOILER SAFETY LAW

1. Boiler Inspections

20-23-101. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Boiler", or "boilers" means any boiler or like vessel or container in which water is heated or steam is generated by the application of heat and includes:

(A) Steam boilers that generate steam under pressure and includes:

(i) High pressure steam boilers that generate steam under pressure above fifteen pounds per square inch gauge (15 psig); and

(ii) Low pressure steam heating boilers that generate steam at fifteen pounds per square inch gauge (15 psig) or less for heating purposes;

(B) Hot water heating boilers that heat water for the external use of heating any area or building; and

(C) Hot water heaters that are used for heating water for external use;

(2) "Horsepower" means the evaporation of thirty-four and one-half pounds (34 1/2 lbs.) of water from a temperature of two hundred twelve degrees Fahrenheit (212^{o} F) into steam at two hundred twelve degrees Fahrenheit (212^{o} F) at fourteen and seven-tenths pounds per square inch absolute (14.7 psia);

(3) "Internal" and "external" inspection means a thorough and proper inspection as provided for in the rules and regulations by the Boiler Advisory Board;

(4)(A) "Pressure piping" means power piping systems and their component parts within or forming a part of the pressure piping system connected to any boiler or unfired pressure vessel covered by the provisions of this chapter.

(B) This includes only boiler external piping for power boilers and high temperature, high pressure water boilers in which:

(i) Steam or vapor is generated at a pressure of more than fifteen pounds per square inch gauge pressure (15 psig); and

(ii) High temperature water is generated at pressures exceeding one hundred sixty pounds per square inch gauge pressure (160 psig) and/or temperatures exceeding two hundred fifty degrees Fahrenheit (250^{o} F) or one hundred twenty degrees Centigrade (120^{o} C).

(C) Boiler external piping shall be considered as that piping which begins where the boiler proper terminates; at:

(i) The first circumferential joint for welding end connections;

(ii) The face of the first flange in bolted flanged connections; or

(iii) The first threaded joint in that type of connection and which extends up to and including the valve or valves required by regulation;

(5) "Pressure vessel" means any unfired pressure vessel constructed for the accumulation, storage, or transportation of air, liquids, or gases that are under induced pressure; and

(6) "PSIG" means pounds per square inch gauge pressure.

20-23-102. Exceptions.

(a) The provisions of this chapter shall not apply to:

(1) Inspection and installation permit requirements on air storage vessels located in service stations and garages;

(2) Air tanks to twelve gallons (12 gals.) or less containing one hundred fifty pounds per square inch (150 psi) or less;

(3) Boilers and unfired pressure vessels which are under the inspection regulations of the Interstate Commerce Commission;

(4) Boilers and unfired pressure vessels used for domestic purposes in private residences and apartment houses of eight (8) or fewer apartments;

(5) Unfired pressure vessels, other than air tanks or vessels listed in subdivisions (1)-(4) of this subsection (a), where the maximum allowable working pressure is fifteen pounds per square inch (15 psi) or less or a volume of five

cubic feet (5 cu.ft.) or less, or coil-type steam generators without accumulative drum, or to vessels used in connection with or the storage of liquefied petroleum gases. However, all such unfired pressure vessels shall be constructed in compliance with the appropriate regulations applicable thereto;

(6) Hot water heaters under two hundred thousand british thermal units (200,000 btu), except those heaters located in hospitals, schools, day care centers, and nursing homes;

(7) Hot water supply storage tanks which are heated by steam or any other direct or indirect means when heat input is less than two hundred thousand british thermal units per hour (200,000 btu/hr.), when water temperature is less than two hundred ten degrees Fahrenheit (210^{o}F), and when the vessel has nominal water-containing capacity of less than one hundred twenty gallons (120 gals.);

(8)(A) Pressure vessels which are an integral part of components of rotating or reciprocating mechanical devices and hydraulic or pneumatic cylinders where the primary design considerations and stress are derived from the functional requirements of the device; or

(B) Pressure vessels which are an integral part of the structure and have a primary function of transporting fluids from one (1) location to another within a system; and

(9) Vessels with a nominal water-containing capacity of one hundred twenty gallons (120 gals.) or less for containing water under pressure, including those containing air, the compression of which serves only as a cushion.

(b) The provisions of this chapter shall not apply to inspection, installation permit requirements, or regulation of boilers and unfired pressure vessels used in connection with the production, distribution, storage, or transmission of oil, natural gas, or casinghead gas.

20-23-103. Enforcement.

(a) The criminal penalties provided by this chapter shall be enforced by the prosecuting attorney of each judicial district. The administrative penalties provided by this chapter shall be imposed pursuant to regulation of the Director of the Department of Labor.

(b) The director may collect an administrative penalty imposed pursuant to this chapter in a civil action in a court of competent jurisdiction, and he shall not be required to pay costs or to enter a bond for payment of costs.

20-23-104. Periodic or regular attendance.

(a) All boilers subject to the provisions of this chapter shall be continuously monitored by mechanical and electronic devices approved by the Director of the Department of Labor. When a plant is in operation or when any public building is occupied, the boilers shall be under regular attendance by a boiler operator unless otherwise exempt.

(b) Boilers that are manually operated must be under constant attendance whenever they are in use for any purpose.

(c) All steam boilers fifty horsepower (50 hp.) and over, as rated by the manufacturer in any location, and steam boilers used in hospitals, hotels, schools, theatres, and office buildings, but not limited to these places, must be under regular attendance by a licensed operator who holds a certificate of competency issued by the Boiler Inspection Division.

20-23-105. Disposition of funds.

(a) All money received under the provisions of this chapter shall be paid to the Treasurer of State, who shall place this money to the credit of the Department of Labor Special Fund, there to be used by the Department of Labor in carrying out the functions, powers, and duties as set out in this chapter and to defray the costs of the maintenance, operation, and improvements required by the department in carrying out the functions, powers and duties otherwise imposed by law on the department or the Director of the Department of Labor.

(b) The director is authorized to issue vouchers for salaries and expenses of the division when proper appropriation has been made for the expenditures.

2. Administration

20-23-201. Boiler Advisory Board - Creation - Duties.

(a)(1) There is created a Boiler Advisory Board.

(2)(A) The board shall be appointed by the Governor.

(B) The Director of the Department of Labor or his or her designee shall be ex officio chair. The board shall consist of four (4) members:

(i) One (1) member of the board, who must be employed by an insurance company insuring boilers and who must have had issued to him or her a certificate of competency and commission as an inspector of boilers, shall represent insurance companies insuring boilers;

(ii) A second member, who must be an owner or official of a concern using at least two hundred (200) boiler horsepower and who must have had ten (10) years' experience in the operation of boilers, shall represent concerns using boilers.

(iii) A third member, who must have had ten (10) years' experience in the construction of boilers, shall represent the boiler manufacturers or boilermakers; and

(iv) A fourth member, who must have ten (10) years' experience in the operation of boilers, shall represent the operating engineers.

(3) The terms of office for the four (4) members so appointed shall be for four (4) years, shall commence on the dates of appointment, and shall be arranged in such a manner that the term of one (1) of the members shall expire on January 14 of each year.

(b) The duties of the board shall be:

(1) To assist with the formulation of rules and regulations of the construction, installation, inspection, repair, and operation of boilers and unfired pressure vessels and their appurtenances, and of pressure piping, as set out in this chapter;

(2) To assist in giving examinations to applicants seeking certificates of competency and commissions as inspectors of boilers; and

(3) To give counsel and advice as will aid the Chief Inspector of the Boiler Inspection Division in the performance of his duties.

(c) The board may not meet more often than four (4) times a year at the call of the chief inspector, who shall designate in the call the time and place of the meeting.

(d) The members of the board except the ex officio chairman may receive expense reimbursement and stipends in accordance with §25-16-901 et seq.

20-23-202. Chief inspector, deputy inspector, etc.

(a)(1) When the office of chief inspector becomes vacant, the Director of the Department of Labor shall employ a citizen of the State of Arkansas to be Chief Inspector of the Boiler Inspection Division.

(2) The chief inspector must have at the time of employment not less than ten (10) years' experience in the construction, maintenance, installation, and repair or inspection of high pressure boilers and unfired pressure vessels.

(b)(1) The director is authorized and empowered to employ a technical assistant and deputy inspectors of boilers.

(A) Inspectors of steam boilers and unfired pressure vessels shall have had at the time of employment not less than five (5) years experience in the construction, maintenance, installation, and repair of high pressure boilers and unfired pressure vessels or possess a currently valid commission from the National Board of Boiler and Pressure Vessel Inspectors.

(B)(i) Inspectors of steam boilers and unfired pressure vessels also shall have passed a written examination.

(ii) The examination shall conform to standards not exceeding those prescribed by the Boiler Code of the American Society of Mechanical Engineers.

(iii) The examination shall test the inspector's knowledge of the construction, installation, maintenance, and repair of boilers and their appurtenances.

(2) The director is also empowered to employ clerical and administrative employees, as well as other inspectors, as necessary to perform the work of the Boiler Inspection Division.

(3) The salaries are to be approved by the General Assembly.

(c) The salaries of the employees of the division, together with the necessary expenses of the division, shall be paid out of the fees for which provision is made in this chapter.

20-23-203. Chief inspector's duty to inspect and enforce.

(a) The Chief Inspector of the Boiler Inspection Division, either personally or by a deputy inspector, shall carefully:

(1) Inspect internally and externally one (1) time annually every high pressure steam boiler and steam generating apparatus;

(2) Inspect externally one (1) time annually and internally one (1) time every three (3) years every low pressure steam heating boiler to the extent permitted by the design and construction of the boiler;

(3) Inspect one (1) time biennially every unfired pressure vessel located in this state which is not excepted from the inspections by the provisions of this chapter; and

(4) Give the owner or operator of the boiler notice of the time when an internal inspection will be made.

(b) The chief inspector shall have free access at all reasonable times for himself and his deputies to any premises in this state where a boiler or pressure piping is being built or where a boiler or pressure piping or power plant apparatus is being installed or operated, for the purpose of ascertaining whether the boiler or piping or apparatus is built, installed, and fitted with the necessary appliances and operated in accordance with the provisions of this chapter and the regulations adopted pursuant thereto.

(c)(1) The chief inspector shall enforce the laws of the state governing the use of boilers and unfired pressure vessels. He shall examine into and report to the Director of the Department of Labor the causes of boiler explosions which occur within the state.

(2) He or she shall keep in his office a complete and accurate record of the names of all owners or operators of boilers inspected by his or her division, together with the location, make, type, dimensions, age, condition, pressure

allowed upon, and date of the last inspection of all boilers and shall make an annual report thereon to the director.

3. Certification of Boilers

20-23-301. Certificate of inspection required - Application of regulations and standards - Penalties.

(a)(1) No owner or user of a boiler or pressure vessel or engineer or fireman in charge of a boiler or pressure vessel shall operate or allow the boiler or pressure vessel to be operated without a certificate of inspection issued by the Director of the Department of Labor or shall allow a greater pressure in the boiler or pressure vessel than is allowed by the certificate of inspection.

(2)(A) All boilers and pressure vessels installed or in operation in this state shall conform to those regulations and standards that shall from time to time be adopted by the Boiler Inspection Division with the approval of the director.

(B) The regulations and standards shall not exceed those set out in the several sections of the Boiler Code of the American Society of Mechanical Engineers and shall have the force of law immediately upon their approval by the director.

(3) No person shall operate or cause to be operated any boiler or unfired pressure vessel on which the certificate of inspection has been suspended or the operation of which has been forbidden by an inspector as provided in §§20-23-203, 20-23-306, 20-23-310, 20-23-401, and 20-23-402.

(4) All pressure piping installed in this state shall conform to those regulations and standards that shall from time to time be adopted by the division with the approval of the director. The regulations and standards shall not exceed those set out in the American Society of Mechanical Engineers Code for Pressure Piping, Power Piping Code, B31.1.

(b) Any person violating the provisions of this section shall be subject to an administrative fine of not less than twenty-five dollars ($25.00) nor more than one thousand dollars ($1,000).

20-23-302. Report by manufacturer, owner, and user.

(a) Every manufacturer, owner, or user of a boiler or unfired pressure vessel in use or to be used in any part of the state and subject to inspection by the Boiler Inspection Division, as provided by this chapter, shall report to the division the location of the boiler or unfired pressure vessel at such times and in such manner and form as may be determined by the rules and regulations of the division.

(b) Any owner, user, or agent of the owner of any boiler or unfired pressure vessel subject to inspection by the division, as provided in this chapter, who shall fail to report its location to the division shall be subject to an administrative fine of not less than one hundred dollars ($100).

20-23-303. Hydrostatic pressure testing.

(a) Boilers and unfired pressure vessels may be tested by hydrostatic pressure one-quarter (1/4) greater than the maximum allowable working pressure when in the judgment of the inspector such a test is necessary to ascertain the true condition of the boiler.

(b) All boilers to be tested by hydrostatic pressure shall be filled with water at no less than ambient temperature but in no case less than seventy degrees Fahrenheit (70^{o}F). The metal temperature shall not exceed one hundred twenty degrees Fahrenheit (120^{o}F) during the final examination.

(c) The responsibility for hydrostatic testing shall be that of the owner.

20-23-304. Failure to make ready for inspection.

Any owner, user, or agent of the owner of any boiler subject to inspection by the Boiler Inspection Division who shall fail to have a boiler ready for inspection after due notice as provided in this chapter shall pay to the division the inspection fee provided by this subchapter and shall be subject to an administrative fine of any sum not less than ten dollars ($10.00).

20-23-305. Special inspection.

If at any time the owner, user, or agent of the owner of any boiler within the state shall desire a special inspection of any

boiler, it shall be made by the Boiler Inspection Division after due request thereof. The inspector making the inspection shall collect a fee of one hundred dollars ($100.00) for each boiler together with his expenses from Little Rock to the place of inspection and return.

20-23-306. Issuance.

(a)(1) Upon receipt by the Boiler Inspection Division of an annual or biennial certificate report of inspection from a state inspector or from an inspector employed by an insurance company that a boiler or pressure vessel is in safe working condition with the required fittings, valves, and appliances properly installed and set, the Director of the Department of Labor shall issue to the owner of the boiler or pressure vessel a certificate of inspection.

(2) This certificate shall be issued upon payment of a fee of fifteen dollars ($15.00) in cases of all boilers other than unfired pressure vessels and a fee of thirty dollars ($30.00) in cases of unfired pressure vessels.

(3) This certificate of inspection shall state the maximum pressure at which the boiler or pressure vessel may be operated as may be determined by the rules adopted by the division, as provided in this chapter.

(b) Thereupon, the owner or user may operate boilers other than unfired pressure vessels described in the certificate for one (1) year from the date of annual inspection and in the case of unfired pressure vessels, for two (2) years from the date of biennial inspection and until another inspection is made unless the certificate shall be sooner withdrawn.

(c) Any owner or operator of a boiler or pressure vessel who is dissatisfied with the result of an inspection made by an inspector employed by an insurance company may appeal to the Chief Inspector of the Boiler Inspection Division, who shall cause a special investigation to be conducted and, upon the report of the inspection, shall render his decision, the decision to be final.

20-23-307. New boilers and unfired pressure vessels - Permit required.

(a) Every manufacturer, contractor, jobber, owner, or user of a boiler or unfired pressure vessel or pressure piping system shall obtain a permit from the Boiler Inspection Division before any boiler or unfired pressure vessel or pressure piping system may be installed or moved and installed in the State of Arkansas.

(b) When new boilers or unfired pressure vessels are to be installed, the manufacturer's data report for each boiler and unfired pressure vessel must be submitted with the application for installation.

(c) No boiler or unfired pressure vessel or pressure piping may be installed without approval from the division.

20-23-308. New boiler and unfired pressure vessels - Fees.

(a) The following fees shall be paid before permits may be issued for the installation of any boiler or unfired pressure vessel:

(1) BOILERS:

(A) Up to 25 horsepower, incl. 15.00
(B) Over 25 horsepower to 50 horsepower, incl..... 20.00
(C) Over 50 horsepower to 100 horsepower, incl..... 25.00
(D) Over 100 horsepower to 200 horsepower, incl. .. 30.00
(E) Over 200 horsepower to 300 horsepower,incl. 50.00
(F) Over 300 horsepower to 400 horsepower, incl. ... 60.00
(G) Over 400 horsepower to 500 horsepower, incl. ... 70.00
(H) Over 500 horsepower 95.00

(2) UNFIRED PRESSURE VESSELS, INCLUDING HOT WATER STORAGE CONTAINERS:

(A) 500 gallons capacity or less..... 15.00
(B) 501 gallons capacity to 1,000 gallons capacity ... 20.00
(C) 1,001 gallons capacity to 5,000 gallons capacity 40.00
(D) 5,001 gallons capacity and over 50.00

(b) The fee paid for the issuance of a permit for the installation of pressure piping shall be one hundred dollars ($100).

20-23-309. New boilers and unfired pressure vessels - Penalty.

Every manufacturer, jobber, dealer, or individual selling or offering for sale or operating any boiler or unfired pressure vessel or installing any pressure piping that does not meet the requirements of the rules and regulations adopted shall be guilty of a felony and upon conviction shall be fined not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000) and in addition may be imprisoned for not more than three (3) years, or both.

20-23-310. Suspension.

(a)(1) The Chief Inspector of the Boiler Inspection Division or his authorized representatives may at any time suspend an inspection certificate when, in their opinion, the boiler or unfired pressure vessel for which it was issued cannot be operated without menace to the public safety, or when the boiler or unfired pressure vessel is found not to comply with the rules and regulations provided in this subchapter.

(2) Any insurance company inspector who has been issued an Arkansas commission and is inspecting boilers or pressure vessels in this state shall have corresponding powers with respect to operating certificates for boilers or pressure vessels insured by the company employing him.

(3) The suspension of an operating certificate shall continue in effect until the boiler or pressure vessel shall have been made to conform to the rules and regulations of the Boiler Inspection Division and until the operating certificate shall have been reinstated.

(b) Any inspector of the division or any commissioned inspector of any insurance company who after inspection of a boiler or unfired pressure vessel shall find it unsafe for the operation shall suspend its certificate of inspection and forbid its further use until it shall have been made to conform to the standards adopted by the division and until its certificate of inspection shall have been reinstated by an authorized inspector.

20-23-311. Inspection fees generally.

(a) Within thirty (30) days from the date of inspection, there shall be paid for the annual inspection of each boiler by

the Boiler Inspection Division made according to the provisions of this chapter, the sum as follows:

(1) BOILERS:

(A) Up to and including 15 horsepower, incl. $10.00
(B) Over 15 horsepower to 50 horsepower, incl..... 13.00
(C) Over 50 horsepower to 100 horsepower, incl..... 18.00
(D) Over 100 horsepower to 150 horsepower, incl. 20.00
(E) Over 150 horsepower to 250 horsepower, incl..... 23.00
(F) Over 250 horsepower to 500 horsepower, incl. 35.00
(G) Over 500 horsepower 50.00

(2) SHOP INSPECTIONS: Per day, four hundred and forty dollars ($440); per half day, two hundred and twenty dollars ($220); plus expenses, including mileage not to exceed the rate authorized by the General Assembly to employees of state agencies who furnish their own transportation, and meals and lodging in accordance with that approved by the General Assembly as a daily allowance.

(3) UNFIRED PRESSURE VESSELS:

(A) 150 gallons or less ..... $ 9.00
(B) 151 gallons to 500 gallons 10.00
(C) 501 gallons to 1,000 gallons 11.00
(D) 1,001 gallons to 2,000 gallons 12.00
(E) 2,001 gallons to 3,000 gallons 13.00
(F) 3,001 gallons to 5,000 gallons 14.00
(G) 5,001 gallons and over 18.00

(b) The foregoing rates may be reduced by the Director of the Department of Labor at the beginning of any fiscal year if the rates produce a greater amount of revenue than is required to defray the cost of operation of the division.

(c) All inspection fees shall be paid by the owner, user, or agent of the owner, and the inspector is authorized to receive the fee and issue his receipt therefor.

(d) If the owner, user or agent of the owner shall fail to pay any foregoing inspection fee within thirty (30) days, a civil money penalty equal to the amount of the unpaid fee shall attach to the outstanding amount of the fee and the director shall be empowered to collect this penalty in addition to the amount of the fee.

20-23-312. Inspection fees - Collection.

(a)(1) In addition to other remedies provided for by this chapter, if after the making of any inspection or accrual of any charge or penalty required or authorized by this chapter, the fee, penalty, or charge is not paid within thirty (30) days after demand upon whoever is liable therefor, the Director of the Department of Labor is authorized to employ an attorney, who is empowered without payment of costs or giving of bond for costs to institute suit in the name of the State of Arkansas in any court of competent jurisdiction to collect said fees, penalties, costs and charges.

(2)(A) The court where suit is brought pursuant to subdivision (a)(1) of this section for collection of fees, penalties and charges shall, without limitation based on the actual amount of the judgment, award an attorney's fees equal to the actual cost to the Department of Labor or the Boiler Inspection Division for the regular hourly rate of pay of the attorney multiplied by the actual hours, including, but not limited to travel time, litigation and case review.

(B) Furthermore, the court shall award, without limitation based on the actual amount of the judgment an amount equal to all costs incurred by the department or the division including, but not limited to, travel costs, witness fees, sheriff's service fees, or costs incurred pursuant to the collection of any judgment obtained by the department or division.

(b)(1) The plaintiff in the suits is given a lien upon the boiler and all parts, connections, and attachments thereto, whether attached to the land or not, to accrue the payment of the inspection fees for making the inspection.

(2) The lien shall attach to the property at the time of making the inspection and shall continue until all inspection fees are paid.

(3) The lien, when it so attaches, shall be held to be prior, paramount, and superior to the liens, claims, and demands of all persons whomsoever, whether owners, agents, mortgagees, trustees, and beneficiaries under trusts or owners whether prior in time or not.

20-23-313. Inspection fees - Hearing - Judgment.

(a) The plaintiff shall file notice of the lien with the clerk of the circuit court of the county in which the property is located within ninety (90) days after the date of the inspection of the property, in the form and manner substantially the same as mechanics' liens are now filed. The notices when so filed shall be docketed and placed on file as mechanics' liens are now docketed and kept on file.

(b) The plaintiff, if the fees are not paid within sixty (60) days after filing of the notice, shall institute a suit to foreclose the lien upon this property in the chancery court of the county in which the lien is filed. The suit shall be filed against the person causing the inspection to be made or claiming as interest at the time the inspection is made. It shall also name such other persons as it may believe to be interested in the property, as owners, mortgagees, or otherwise, make them defendants in the action, and cause service of process, in manner and form as now provided by law in mechanics' liens cases, to be served upon defendants.

(c)(1) The suits shall be given speedy trial, and the judgment, if for the plaintiff, shall be that the plaintiff recover against the property and those found to be interested therein, the amount of the inspection fees, together with interest, cost of suit, and reasonable attorney's fees to be taxed as cost by the court.

(2) If the cause is appealed to a higher court, then a similar fee shall be taxed as costs by the court hearing the appeal if the plaintiff shall prevail therein.

(d) The court shall also, in its judgement, order the property sold to satisfy the lien, judgment, and costs and shall order execution against the defendants against whom judgment is rendered in addition thereto for payment of any judgment and costs over and above the amount the property may bring at sale.

(1) The sale shall be had and conducted in accordance with other judicial sales, as may be directed by the court in which the foreclosure proceedings are conducted.

(2) Out of the proceeds of the sale shall be paid the judgment, costs, interest, and expenses of the sale, as in other

foreclosure cases; the remainder is to be paid over to the persons decreed by the court to be rightfully entitled to it.

20-23-314. Pressure piping inspections.

(a) The installation of pressure piping shall be periodically inspected during the course of the installation by an inspector commissioned pursuant to the provisions of §20-23-401 in the manner and with the frequency prescribed by the rules and regulations of the Boiler Inspection Division.

(b)(1) Upon completion of the installation of any pressure piping, a final inspection shall be made, and the inspector shall complete a final inspection report on a form approved by the Director of the Department of Labor.

(2) A copy of the final inspection report shall be filed with the division within thirty (30) days of completion of the installation.

(c) In the event that the report required by subsection (b) of this section is not filed within thirty (30) days after completion of the installation, the division shall designate an inspector in its employ to make the inspection and report required by subsection (b) of this section.

(d) The inspections and reports required by subsections (a) and (b) of this section may be made by an inspector in the employ of the division.

(e) For each inspection made by an inspector employed by the division and required by subsections (a), (b), or (c) of this section, the holder of the installation permit shall pay the division an inspection fee in the amount of four hundred forty dollars ($440) per day or two hundred twenty dollars ($220) per half-day, plus expenses and mileage at the rates authorized for employees of the Department of Labor who furnish their own transportation.

(f) The inspections required by this section and the installation permit required for pressure piping by §20-23-307 shall apply only to new installations and shall not be construed as requiring an inspection or an installation permit for maintenance, repair, or renovation of existing facilities.

4. Certification of Inspectors, Operators, Etc.

20-23-401. Inspectors generally.

(a) Certificates of competency and commissions as inspectors of boilers shall be issued by the Boiler Inspection Division to persons in the employ of any company authorized to insure boilers against explosions in this state.

(b) Persons employed as inspectors must pass a written examination as to their knowledge of the construction, installation, maintenance, and repair of boilers and their appurtenances. The examination shall be confined to questions, the answers to which will aid in determining the fitness and competency of the applicant for the intended service and shall be of uniform grade throughout the state.

(c) However, a person who holds a certificate of competency or a commission issued by another state from a written examination equivalent to that required by this state may be issued a commission without further examination.

(d) For each certificate of competency and commission as inspector of boilers issued under the provisions of this subchapter, a fee of twenty-five dollars ($25.00) shall be charged to the person to whom the certificate and commission are issued.

(e) The commission shall be good for the fiscal year during which it is issued and shall be renewed upon receipt of fifteen dollars ($15.00).

(f)(1) Any commission issued under the provisions of this subchapter shall be immediately returned to the division when the inspector to whom it has been issued shall cease to be employed by the insurance company employing him at the time the commission was issued.

(2) If a person holding a commission as an inspector shall be employed by any other insurance company than the one (1) by which he was employed at the time the commission was issued, a duplicate commission may be issued upon the payment of a fee of fifteen dollars ($15.00) provided the commission has been renewed annually.

(g) Commissions that have lapsed will require a renewal fee of fifteen dollars ($15.00).

(h) Certificates of competency and commissions issued to boiler inspectors may be revoked upon notice to the holder thereof and to the employer of the inspector for:

(1) Incompetency or untrustworthiness; or

(2) Willful falsification of any matter or statement contained in his application or any report of any inspection.

(i) The holder of the certificate of competency and commission shall be entitled to a hearing before the division to show cause why the certificate shall not be revoked.

20-23-402. Inspectors employed by insurance companies.

(a) Boiler inspectors employed by insurance companies which are authorized to insure boilers in this state shall hold certificates of competency issued by the Boiler Inspection Division as provided in this section and shall:

(1) Inspect internally and externally, at least one (1) annually, all high pressure steam boilers insured by their respective companies;

(2) Inspect externally one (1) time annually and internally one (1) time every three (3) years every low pressure steam heating boiler insured by their respective companies; and

(3) Inspect unfired pressure vessels biennially.

(b) The insured boilers shall be exempt from all inspections other than those of the respective insurance company inspectors unless there is some evidence that proper inspection is not being made.

(c) Each insurance company shall, within thirty (30) days following each internal inspection made by its inspectors file a copy of the internal inspection report and date of the inspection with the division on forms approved by the Department of Labor.

(d)(1) Each insurance company shall file a report annually of all boilers insured and inspected showing location, owner, state number, and date of last inspection.

(2) This report shall be filed not later than January 30 of each calendar year.

(e)(1) If annual reports are not filed with the division by insurance companies who have insurance on boilers in the State of Arkansas within sixty (60) days from the date they are due inspection, the division shall make the required inspection.

(2) A special inspection fee of one hundred dollars ($100) for each boiler or unfired pressure vessel inspected, plus mileage and expenses from Little Rock to point of inspection and return not to exceed the current rate authorized by the General Assembly to employees of state agencies who furnish their own transportation, plus any meals and hotel bills incurred shall be charged to the insurance company insuring the boilers or unfired pressure vessels unless an extension of time is granted by the chief inspector.

(f) No operating certificate issued for an insured boiler inspected by an insurance company inspector shall be valid after the boiler for which it was issued shall cease to be insured by a company authorized by this state to carry the insurance.

20-23-403. Inspectors - Failure to perform duties.

(a) Any inspector of boilers who shall report a boiler or pressure vessel for a certificate of inspection as safe to operate while knowing the report is false and that the boiler is unsafe to operate, who shall fail to perform his duties as stated in this chapter, or who shall cause the repair, installation, or sale of a boiler or pressure vessel that does not comply with the standards as set out in this chapter and the regulations provided shall be guilty of a felony.

(b) Upon conviction, he shall be punished by a fine in any sum not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or by imprisonment not to exceed three (3) years or by both fine and imprisonment.

20-23-404. Operators.

(a) The Boiler Inspection Division shall conduct examinations for each applicant seeking a boiler operator's license.

(1) This examination may be either written or oral.

(2) Each applicant shall pay a fee of twenty-five dollars ($25.00) for the examination and the first license.

(3) Each license must be renewed annually. The annual fee shall be seventeen dollars ($17.00).

(4) Before the applicant may participate in an examination, he or she must have had not less than six (6) months of on-the-job training. Proof of this must be furnished

to the Department of Labor by the employer prior to the examination.

(5) A restricted license may be issued to an applicant who has passed the examination required in subdivision (a)(1) of this section but who has not met the requirements of subdivision (a)(4) of this section, provided that:

(A) The restricted license shall be effective for one (1) year from the date of issue; and

(B) The licensee is to work under the direction and supervision of a regularly licensed boiler operator.

(b)(1) Any operator found operating a boiler without a certificate issued by the division or operating a boiler knowing it to be defective shall have his license revoked at once.

(2) Any person found operating a boiler without an operator's license shall be subject to an administrative fine of not less than twenty-five dollars ($25.00) and not more than one hundred dollars ($100).

20-23-405. Sellers, installers, and repairers.

(a)(1) All persons, firms, or corporations engaged in the sale or installation of boilers, unfired pressure vessels, or hot water storage containers or pressure piping in any location shall be licensed by the Boiler Inspection Division to perform the work.

(2) The annual license fee shall be seventy-five dollars ($75.00) per year, payable in advance on or before January 31 or each calendar year.

(b)(1) All persons, firms, or corporations engaged in the repair of boilers or unfired pressure vessels shall be licensed by the division.

(2) The annual license fee shall be seventy-five dollars ($75.00) annually, payable in advance on or before January 31 of each calendar year.

(c) Each person, firm, or corporation must furnish evidence suitable to the division that the person, firm, or corporation is qualified to perform the work.

(d) The license of any person, firm, or corporation may be revoked by the division upon proof that the person, firm, or

corporation is not performing the work in compliance with this chapter and the regulations as provided in this chapter.

(e) Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars ($50.00) nor more than one thousand dollars ($1,000) or by imprisonment for not more than five (5) years or by both fine and imprisonment.

(f) The provisions of §§20-23-104, 20-23-307 - 20-23-309, and 20-23-403 - 20-23-405 shall not apply to firms under the regulation of the Interstate Commerce Commission.

20-23-406. Restricted lifetime license - Certificate of competency and commission.

(a)(1)(A) Upon reaching the age of sixty-five (65) or any time thereafter, any person who has been a boiler inspector for no fewer than twelve (12) years may apply for a restricted lifetime boiler inspector's certificate of competency and commission.

(B) The certificate of competency and commission shall be issued upon satisfactory proof of age and upon payment of a fee prescribed by the Department of Labor.

(2)(A) Upon reaching the age of sixty-five (65) or any time thereafter, any person who has been a boiler operator for no fewer than twelve (12) years may apply for a restricted lifetime boiler operator's license.

(B) This license shall be issued upon satisfactory proof of age and upon payment of a fee prescribed by the department.

(3)(A) Upon reaching the age of sixty-five (65) or any time thereafter, any person who has been engaged in the sale or installation of boilers, unfired pressure vessels, hot water storage containers, or pressure piping for no fewer than twelve (12) years may apply for a restricted lifetime license.

(B) This license shall be issued upon satisfactory proof of age and upon payment of a fee prescribed by the department.

(4) Upon reaching the age of sixty-five (65) or any time thereafter, any person who has been engaged in the repair of boiler and unfired pressure vessels for no fewer than twelve

(12) years may apply for a restricted lifetime license. This license shall be issued upon satisfactory proof of age and upon payment of a fee prescribed by the department.

(b) The department shall promulgate rules and regulations necessary to carry out the provisions of this section.

20-23-407. Owner or user inspection programs.

(a) Any owner or user of a steam boiler or pressure vessel subject to the requirements of this chapter may perform any inspections required by this chapter on such vessels owned or operated by the owner or user if the owner or user meets the requirements prescribed by regulation of the Director of the Department of Labor.

(b) The director shall set out requirements for the certification of owner or user inspectors and certification of owner or user inspection programs by regulation and shall have full authority to promulgate and enforce those regulations.

(c)(1)(A) After notice and opportunity for hearing, any owner or user who is found to have violated regulations prescribed by the director pursuant to this subchapter shall be assessed a civil monetary penalty of not less than one hundred dollars ($100) or more than five thousand dollars ($5,000).

(B) Each day that a violation continues shall be considered a separate violation.

(2) The director is authorized to bring a civil action in a court of competent jurisdiction to recover the amount of any civil monetary penalties.

(d) In addition to civil monetary penalties, any owner or user who is found to be in violation of this section shall be guilty of a Class A misdemeanor.

D. WORK NEAR HIGH VOLTAGE LINES

11-5-301. Purpose.

(a) This subchapter provides for the minimum precautions to be taken during any excavation, demolition, transportation of equipment, construction, repair, or operation in the proximity of energized overhead electrical lines.

(b)(1) The purposes of this subchapter are to provide for the protection of persons engaged in work of any nature in the

vicinity of energized overhead electrical lines, to define the conditions under which work may be carried on safely, the procedures and means by which these conditions may be created, to provide penalties, and to provide remedies to those affected by violations of this subchapter.

(2) The provisions of this subchapter shall not apply to the direct employees of the State Highway Commission or the Arkansas State Highway and Transportation Department.

11-5-302. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Authorized person" means:

(A) Employees of an electrical utility company with respect to the electrical system of such a company, and the employees of a transportation system with respect to the electrical circuits of the system;

(B) Employees of communication utilities, state, county, or municipal agencies having authorized circuit construction on the poles or structures of an electric utility company, transportation system, or communication system;

(C) Employees of an industrial plant with respect to the electrical system of the plant;

(D) Employees of a municipality with respect to the electrical system of the municipality; and

(E) Employees of any electrical or communications contractor with respect to work under his or her supervision, having authorized construction work on the poles or structures of an electrical utility company, transportation system, or communication system;

(2) "De-energizing" means removing the voltage from electrical conductors and grounding;

(3) "Energized overhead electrical lines" means electrical lines which are energized at a potential of four hundred forty (440) volts, or more, as measured between the conductor and the ground;

(4) "Mechanical barrier" means a temporary device for separating and preventing contact between material or equipment and energized overhead electrical lines such as:

(A) Insulating barriers; or

(B) Nonconductive enclosures around conductors;

(5) "Shall" is to be understood as mandatory;

(6) "Should" is to be understood as advisory;

(7) "Temporary relocation" means:

(A) Removing electrical conductors from poles;

(B) Elevating electrical conductors; or

(C) Rerouting electrical conductors;

(8) "Warning sign" means a weather-resistant sign of not less than five inches by seven inches (5" x 7") with a yellow background and black lettering reading as follows: "WARNING - Unlawful to operate this equipment within ten feet (10') of energized overhead electrical lines."

11-5-303. Application of National Electrical Safety Code.

The provisions of the National Electrical Safety Code, as adopted by the State of Arkansas, shall apply in the interpretation of this subchapter.

11-5-304. Exceptions.

This subchapter does not apply to the construction, reconstruction, operation, and maintenance of energized overhead electrical lines and their supporting structures and associated equipment by authorized electrical person; nor to any authorized person engaged in the construction, reconstruction, operation, and maintenance of overhead electrical or communications circuits of conductors and their supporting and associated equipment of rail transportation systems, electrical transmission or distribution systems, or communications systems.

11-5-305. Penalty for violations.

(a) Every person, firm, corporation, or association who violates any of the provisions of this subchapter shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000); and in addition thereof, if such violation results in physical or electrical contact with any energized overhead electrical line or conductor, and such violation is a proximate cause of any damage or injury to person or property, then the person, firm, corporation, or association violating the provisions of this subchapter, shall be

liable to the owner or operator of such electrical line or conductor for all damage to such facilities and for all loss, cost, and damages, including attorney fees, incurred by way of property damage or personal injury by such owner or operator as a result of any such accidental contact.

(b) The provisions of this section shall not apply to public utilities engaged in business in the State of Arkansas, nor their direct employees, nor to persons owning, leasing, or otherwise possessing a legal interest in the land upon which such energized overhead electrical line is located.

11-5-306. Use of alternative devices or methods.

Where specific devices or methods are mentioned in this subchapter, other devices or methods which will secure equally good results may be used, subject to the approval of the enforcing authority.

11-5-307. Notification.

(a)(1) When any person, firm, or corporation desires to temporarily carry on any function, activity, work, or operation in closer proximity to any energized overhead electrical line or conductor than permitted by this subchapter, the person or persons responsible for the work to be done shall promptly notify the Director of the Department of Labor and the operator or owner of the electrical lines in writing of the work to be performed and make appropriate arrangements with the operator of the electrical lines before proceeding with any work which would impair the clearances required by this subchapter.

(2) The written notice shall be given to the owner or operator of the electrical lines by submitting notification to the manager of the nearest local office of the operator or owner of the electrical lines with a copy forwarded to the director.

(b)(1) The work shall be performed only after satisfactory mutual arrangements have been negotiated between the owner and operator of the electrical lines and the person or persons responsible for the work to be done.

(2) The owner or operator of the electrical lines shall commence work on the mutual arrangements as provided herein within three (3) working days of the mutual

arrangement. Once initiated, the clearance work will continue without unreasonable interruption to complete.

11-5-308. Prohibited acts.

(a) No person, firm, corporation, or association shall, individually or through an agent or employee, and no person as an agent or employee of any person, firm, corporation, or association, shall perform, require, or permit any agent or employee to perform any function or activity upon any land, building, structure, highway, or other premises when it could be reasonably expected, during the performance of such activity, for any person or employee engaged in performing work connected with or related to such function or activity to move or be placed in a position within ten feet (10') of any energized overhead electrical line or conductor, or when it could be reasonably expected for any part of any tool, equipment, machinery, or material to be used by any such person or employee to be brought within ten feet (10') of any such overhead line or conductor through any lateral, vertical, or swinging motion during the performance of such function or activity, unless and until danger from accidental contact with said overhead lines has been effectively guarded against in the manner hereinafter prescribed.

(b) No person, firm, corporation, or association shall, individually or through an agent or employee, and no person as an agent or employee of any person, firm, corporation, or association, shall store, operate, erect, maintain, move or transport any tools, machinery, equipment, supplies, materials, or other apparatus, house, other building, or any part thereof, within ten feet (10') of any energized overhead electrical line, unless and until danger from accidental contact with said overhead line has been effectively guarded against in the manner hereinafter prescribed.

(c)(1) The commission of any act enumerated in subsections (a) or (b) of this section shall be prohibited except where energized overhead electrical lines have been effectively guarded against danger from accidental contact, by either:

(A) The erection of mechanical or insulating barriers to prevent physical contact with energized overhead electrical lines; or

(B) De-energizing the overhead electrical lines and grounding.

(2) Only in the case of either of such exceptions may the ten foot (10') clearance required be reduced. The required ten foot (10') clearance shall not be provided by movement of the liens through strains impressed by attachments or otherwise, upon the structures supporting the overhead lines, nor upon any equipment, fixtures, or attachments thereon.

(3) If subdivisions (c)(1)(A) and (B) of this section are not practicable, in the opinion of the owner or operator of the electrical lines and it is necessary to temporarily relocate the overhead electrical lines, mutually agreeable arrangements shall be made with the owner or operator of the overhead electrical lines for such temporary relocation.

(4) In addition to (c)(1)(A) and (B), there shall be installed an insulated cage-type guard or protective device, approved by the Director of the Department of Labor, about the boom or arm of all equipment, except backhoes or dippers. Where the equipment includes a lifting hook device also approved by the director, all lifting lines shall be equipped with insulator links on the lift hook connection.

(5) All mechanical barriers and all insulated protective devices and links referred to herein shall be of such character and construction as are suited to the work operations and adequate for the electrical conditions to be encountered.

(6) All mechanical barriers and all insulated protective devices and links shall be maintained in such functioning condition as to meet periodic inspection.

11-5-309. Warning signs.

(a) The owner, agent, or employer responsible for the operation of equipment shall post and maintain in plain view of the operator on each crane, derrick, power shovel, drilling rig, hay loader, hay stacker, pile driver, or similar apparatus, any part of which is capable of vertical, lateral, or swinging motion, an approved weather-resistant warning sign legible at twelve feet (12') reading:

"WARNING - Unlawful to operate this equipment within ten feet (10') of energized overhead electrical lines."

(b) Warning signs shall be placed:

(1) Within the equipment readily visible to operators of cranes and other equipment when at the controls of such equipment;

(2) On the outside of equipment in such number and locations as to be readily visible to mechanics or other persons engaged in the work operations.

(c) Warning signs should not be less than five inches (5") in height, and not less than seven inches (7") in width.

E. ICEBOX SAFETY LAW

20-27-801. Unlawful to leave unattended - Exception.

(a)(1) It shall be unlawful for any person, firm, or corporation to leave or permit to remain outside of any dwelling, building, or other structure, or within any unoccupied or abandoned building, dwelling, or other structure under his or its control in a place accessible to children any abandoned, unattended, or discarded icebox, refrigerator, or other container which has an air-tight door or lid, snaplock, or other locking device which may not be released form the inside, without first removing the door or lid, snaplock, or other locking device from the icebox, refrigerator, or container.

(2) The provisions of this subchapter shall not be applicable to reefers, refrigerators, or ice cars of any railroad or railway express agency or any other refrigerator vehicles unless the vehicles have been abandoned or discarded.

(b)(1) The Labor Safety Administrator of the Department of Labor or any of his deputies or inspectors shall have the right to remove the door hinges or to dismantle, if necessary, any icebox, refrigerator, or other container which has an air-tight door or lid, snaplock, or other locking device which violates the provisions of this subchapter.

(2) The Labor Safety Administrator or any of his deputies or inspectors shall have the right to enter any junkyard, vacant lot, dump, yard, unoccupied or abandoned building, dwelling, or other structure or place frequented by children in order to perform duties pursuant to this section.

(c)(1) Any person, firm, or corporation who shall fail to comply with the provisions of this section shall be guilty of a

violation of this subchapter. Each and every icebox, refrigerator, or other container abandoned in a condition contrary to the provisions of this section shall be deemed a separate offense.

(2) Any person, firm, or corporation who shall be found guilty of a violation of the provisions of this section shall be subject to a fine of not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100) for each violation.

20-27-802. Inside door handles required on certain walk-in refrigerators, etc.

The Labor Safety Administrator of the Department of Labor or any of his deputies or inspectors may require the installation of inside door handles on any walk-in refrigerator, icebox, freezer, or the door of a cold storage room where in his discretion the absence of inside door handles in the freezing unit may endanger the life of any employee or other authorized personnel using the unit.

F. GLASS SAFETY LAW

20-27-901. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Fabricator" means a person who fabricates, assembles, or glazes from component parts such structures or products commonly known as sliding glass doors, entrance doors, adjacent fixed glazed panels, storm doors, shower doors, bathtub enclosures, panels to be fixed glazed, entrance doors, or other structures to be glazed, to be used or installed in hazardous locations;

(2) "Hazardous locations" means those areas in residential, commercial, and public buildings where the use of other than safety glazing materials would constitute a hazard as the Director of the Department of Labor may determine after notice and hearings as are now required by law. The term shall specifically include those installations, glazed, or unglazed, known as sliding glass doors, framed or unframed glass doors, and adjacent fixed glazed panels which may be mistaken for a

means of ingress or egress, storm doors, shower doors, and tub enclosures whether or not the glazing in the doors, panels, or enclosures is transparent;

(3) "Installer" means those persons or concerns who or which install glazing materials or build structures containing glazing materials in hazardous locations;

(4) "Manufacturer" means a person who manufactures safety glazing material; and

(5) "Safety glazing material" means any glazing material, such as tempered glass, laminated glass, wire glass, or rigid plastic, which meets the test requirements of the American National Standards Institute Standard Z-97.1 - 1972 and which are so constructed, treated, or combined with other materials as to minimize the likelihood of cutting and piercing injuries resulting from human contact with glazing material.

20-27-902. Penalties.

(a) Any person or company violating any of the provisions of this subchapter shall be guilty of a misdemeanor.

(b) Upon conviction the person or company shall be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500) or imprisoned in the county jail not more than thirty (30) days, or both fined and imprisoned.

20-27-903. Labeling required.

(a) Each light of safety glazing material manufactured, distributed, imported, or sold for use in hazardous locations or installed in a hazardous location within this state shall be labeled as such by etching, sand blasting, firing of ceramic material, or pressure sensitive labels on the safety glazing material.

(1) The label shall identify the labeler, whether manufacturer, fabricator, or installer, the thickness and type of safety glazing material, and the fact that the material meets the test requirements of American National Standards Institute Standard Z-97.1 - 1972.

(2) The label must be legible and visible after installation.

(b) Safety glazing labeling shall not be used on other than safety glazing materials.

20-27-904. Requirement in hazardous locations - Exceptions.

(a) It is unlawful in this state to knowingly sell, fabricate, assemble, glaze, install, consent to installation, or cause to be installed glazing materials other than safety glazing materials in, or for use in, any hazardous locations.

(b) This section shall not apply to the replacement of glazing materials in a residence constructed for occupancy of not more than two (2) families, which residence is in existence on January 1, 1974.

20-27-905. Nonliability of employees.

No liability under this subchapter is created for workmen who are employees of a contractor, subcontractor, material supplier, or other employer responsible for compliance with this subchapter.

G. AMUSEMENT RIDE SAFETY LAW

20-27-101 through 20-27-104 Repealed.

23-89-501. Title.

This subchapter shall be known and may be cited as the "Amusement Ride and Amusement Attraction Safety Insurance Act".

23-89-502. Definitions.

As used in this subchapter:

(1)(A) "Amusement attraction" means any building or structure around, over, and through which persons may be moved by vehicle or mechanically driven device integral to the building or structure, and which provides amusement, pleasure, thrills, or excitement.

(B) "Amusement attraction" does not include theatres, museums, or enterprises principally devoted to the exhibition of products of agriculture, industry, education, science, religion, or the arts;

(2) "Amusement ride" means any mechanical device which carries or conveys passengers along, around, or over a fixed

route or course or within a defined area for the purpose of giving the passengers amusement, pleasure, thrills, or excitement and includes the following:

(A) Bungee rides or bungee operations which utilize as a component a bungee cord, which is an elastic rope made of rubber, latex, or other elastic-type materials whether natural or synthetic;

(B) "Go-kart", which means a ride in which a vehicle controlled or driven by patrons specifically designed for and run on a fixed course;

(C) Inflatable attractions such as "space walks", inflatable slides, or inflatable jousting or boxing rings;

(D) Any wave pool, water slide, or other similar attraction that totally or partially immerses a patron in water; and

(E) Artificial climbing walls;

(3) "Department" means Department of Labor;

(4) "Director" means the Director of the Department of Labor.

(5) "Nondestructive testing" means the development and application of technical methods, including, but not limited to, radiographic, magnetic particle, ultrasonic, liquid penetrant, electromagnetic, neutron radiographic, acoustic emission, visual, and leak testing to examine materials or components in ways that do not impair their future usefulness and serviceability in order to:

(A) Detect, locate, measure, and evaluate discontinuities, defects, and other imperfections;

(B) Assess integrity, properties, and composition; and

(C) Measure geometrical characters; and

(6) "Owner" means any person who owns an amusement ride or attraction, or in the event that the amusement ride or attraction is leased, the lessee.

23-89-503. Exemptions.

The following amusement rides or attractions are exempt from the provisions of this subchapter:

(1) Nonmechanized playground equipment including, but not limited to, swings, seesaws, stationary spring-mounted animal features, rider-propelled merry-go-rounds, climbers,

slides, trampolines, swinging gates, and physical fitness devices except where an admission fee is charged for usage or an admission fee is charged to immediate areas where the equipment is located;

(2) An amusement ride or amusement attraction which is owned and operated by a nonprofit religious, educational, or charitable institution or association, or a fair if the ride or attraction is subject to inspection by the State Fire Marshal or by any political subdivision of the state under its building, fire, electrical, and related public safety ordinances;

(3) Coin-operated amusement rides or amusement attractions located on the premises of retail business establishments; and

(4) An amusement ride or amusement attraction which is owned and operated by the State of Arkansas or any political subdivision thereof.

23-89-504. Safety inspection and insurance required – Enforcement - Violations.

(a) It is unlawful for any person or entity to operate an amusement attraction or amusement ride unless the person or entity maintains liability insurance in the minimum amount required by this subchapter at all times during the operation of the amusement attraction or ride in the state and, unless the person has a current safety inspection report made at the time of set-up of the attraction or ride, but before use by the public.

(b)(1) The Director of the Department of Labor may conduct examinations and investigations into the affairs of any person or entity subject to the provisions of this subchapter for the purpose of determining compliance with the provisions of this subchapter.

(2) The director shall administer and enforce the provisions of this subchapter.

(3) The director shall promulgate regulations for the proper administration and enforcement of this subchapter, including regulations establishing minimum safety requirements for the operation and maintenance of amusement rides and attractions.

(4) The director shall employ amusement ride inspectors certified by the National Association of Amusement Ride Safety Officials.

(c) If the director finds that an operator or owner has failed to comply with the provisions of this subchapter, he or she may order the operator or owner to immediately cease operating the amusement attraction or ride, and may impose upon the operator or owner an administrative penalty of not more than ten thousand dollars ($10,000).

(d)(1) If the director finds that an operator or owner failed to comply with the provisions of this subchapter, he or she shall so inform the prosecuting attorney in whose district any purported violation may have occurred.

(2)(A) Upon conviction, the operator or owner shall be guilty or a Class A misdemeanor.

(B) Upon conviction of a willful or knowing violation, the operator or owner shall be guilty of a Class D felony.

(3) Each day of violation shall constitute a separate offense.

(e) The director shall have authority to bring a civil action in any court of competent jurisdiction, without payment of costs or giving bond for costs, to recover any administrative penalty imposed pursuant to this subchapter or to recover any delinquent fees owed pursuant to this subchapter.

(f) The director and his or her deputies, assistants, examiners, and employees and the Director of the Department of Arkansas State Police and his or her deputies, officers, assistants, and employees and any public law enforcement officer shall not be liable for any damages occurring as a result of the implementation of this subchapter.

23-89-505. Safety inspections, notice, and insurance required.

(a) Any person or entity desiring to operate any amusement attraction or amusement ride in this state, other than those specifically exempted in this subchapter, shall as a condition thereof obtain a safety inspection report issued by the owner or operator's liability insurer or an inspector employed by the Department of Labor prior to commencing operation or opening to the public.

(b) Each person or entity desiring to operate any amusement attraction or amusement ride in this state, other than those specifically exempted in this subchapter, shall be covered by a policy of insurance issued by an insurance company authorized to do business in Arkansas or by a surplus lines insurer approved in Arkansas and insuring the owner or operator against liability for personal injury or property damage arising out of the use or operation of the amusement attraction or ride, in the minimum amount of one million dollars ($1,000,000) for each incident or occurrence.

(c)(1) Any person or entity intending to operate an amusement attraction or ride in this state shall notify the director of such intent and shall notify the director of the location, dates, and times of intended operation.

(2) The notice must be made to the director four (4) days prior to intended operation, excluding Saturdays, Sundays, or any legal holidays.

(d) Any person or entity failing to comply with subsection (c) of this section shall be subject to an administrative penalty issued by the Director of the Department of Labor of no more than five thousand dollars ($5,000) in addition to other penalties, both administrative and criminal, contained in this subchapter.

(e) The owner, manager, or operator shall:

(1) Promptly file proof of insurance with each fair board, sponsoring organization, lessor, landowner, or other person responsible for an amusement attraction or ride being offered for use by the public for each location in this state where each attraction or ride is in operation or is scheduled to be in operation; and

(2) Provide a copy of any safety inspection report to the fair board, sponsoring organization, lessor, landowner, or other person responsible for an amusement attraction or ride being offered for use by the public, upon request or pursuant to contractual agreement.

23-89-506. Inspections and fees.

(a)(1) The Director of the Department of Labor is authorized to inspect each person or entity to ensure compliance with this subchapter.

(2) Two (2) times per calendar year, the director shall inspect all permanently placed operational amusement rides or attractions located in this state being operated for profit or charity.

(3) All portable amusement rides or attractions shall be inspected by the director every time they are moved to a new location in Arkansas and before they are permitted to commence operation or open to the public.

(4)(A) Inflatable attractions, self-contained mobile playgrounds, artificial climbing walls, and other patron propelled amusement rides or attractions shall be inspected every six (6) months, unless a more frequent schedule of inspections is established by regulation of the director for certain types of inflatable attractions and self-contained mobile playgrounds.

(B) Self-contained mobile playgrounds, artificial climbing walls, and other patron propelled amusement rides or attractions shall be inspected pursuant to subdivision (a)(4)(A) of this section only if such playgrounds contain no mechanical or electrical parts, structures, or additions such as blowers or lights.

(b) The director is authorized to make an inspection on an emergency basis when notification pursuant to this subchapter is made less than four (4) days, excluding Saturdays, Sundays, and legal holidays, prior to the date of the operation of the facility, if he or she determines that the owner or operator could not have reasonably known of the proposed operation prior to the four-day period, and that the owner or operator meets all other requirements for operation in this state.

(c) If the director or an authorized employee of the department finds that any amusement ride or attraction is defective in a manner affecting patron safety or unsafe, he or she shall attach to the amusement ride or attraction a notice and order prohibiting its use or operation. Operation of the amusement ride shall not resume until the unsafe or hazardous condition is corrected and the director or his or her authorized representative permit such operation.

(d) Any inspector certified pursuant to the requirements of this subchapter who, upon inspection of an amusement ride or attraction, finds the ride or attraction to be defective or unsafe

shall immediately report the ride or attraction and its condition to the Department of Labor,

(e) The director shall charge a fee to be paid by the owner of any amusement ride or amusement attraction for all amusement ride safety inspections performed by any employee of the department. Such fees shall be as follows:

(1) For one (1) to five (5) rides or attractions, one hundred dollars ($100);

(2) For six (6) to fifteen (15) rides or attractions, two hundred dollars ($200);

(3) For sixteen (16) to twenty-five (25) rides or attractions, three hundred dollars ($300);

(4) For twenty-six (26) to thirty-five (35) rides or attractions, four hundred dollars ($400); and

(5) For thirty-six (36) and more rides or attractions, six hundred dollars ($600).

(f) The director is authorized by regulation to implement an inspection fee waiver program for the benefit of a county fair association, provided that:

(1) The county's population is under fifteen thousand (15,000) based on United States Bureau of the Census estimates as of July 1, 1999; and

(2) The county fair association can demonstrate that it would be unable to obtain a carnival for its county fair without such a waiver.

23-89-507. Inspection by insurance company - Change in coverage.

(a)(1) Each insurance company insuring an operator of an amusement attraction or ride as required in this subchapter shall inspect the amusement attraction or rides of the insured for safety at least one (1) time each calendar year.

(2) The operator shall maintain a copy of such report at the site of operation of the attraction or ride, together with proof of insurance coverage.

(b) If any insurer insuring an operator shall cancel the coverage of the operator, the insurer shall notify the Director of the Department of Labor of the cancellation at least ten (10) days before the cancellation is effective.

(c) The insurer shall immediately notify the director if the cancellation notice is rescinded or coverage is reinstated.

(d) If the insurer finds any amusement attraction or ride to be unsafe or cancels the insurance coverage and so notifies the director, then the director shall immediately issue a cease and desist order preventing any operation until written documentation is provided to the director that the amusement attraction or ride has been made safe or insurance coverage has been obtained.

(e) Any insurance company or surplus lines insurer failing to comply with this section shall be subject to revocation of its certificate of authority or registration by the Insurance Commissioner, or in lieu of suspension or revocation, a fine assessed by the commissioner of not more than fifty thousand dollars ($50,000).

(f) Any employee or contractor of an insurer inspecting amusement rides in Arkansas shall be registered and certified by the department pursuant to regulation adopted by the director.

23-89-508. Rules and regulations.

The Director of the Department of Labor is authorized to adopt appropriate rules and regulations to carry out the intent and purposes of this subchapter and to assure its efficient and effective enforcement.

23-89-509. Cease and desist orders - Notice required.

(a)(1) Upon issuance of cease and desist orders pursuant to §23-89-504 or §23-89-507, the Director of the Department of Labor shall promptly transmit his or her order to the Director of the Department of Arkansas State Police.

(2) Whenever possible, the Director of the Department of Labor shall notify any applicable fair boards or sponsoring organizations in the respective districts or counties of this state where the attractions or rides are in operation or are scheduled to be in operation.

(3) The Director of the Department of Labor shall promptly notify these parties when a cease and desist order has been rescinded upon proof of the operator's compliance with the provisions of this subchapter.

(b) Upon receipt of the Director of the Department of Labor's order to cease and desist operations pursuant to subsection (a) of this section, the Department of Arkansas State Police shall promptly serve the order on the operator and order the operator immediately to cease operation of all applicable amusement attractions or rides in operation or scheduled to be in operation in those districts or counties until the cease and desist order has been rescinded.

23-89-510. Accidents – Reporting injuries or death – Investigations.

(a) Any mechanical, structural, or electrical defects directly affecting patron safety for which an amusement ride is closed to patron use for a period of time more than three (3) hours, must be reported in writing personally or by facsimile by the owner or operator to the Department of Labor within twenty-four (24) hours after the closing of the amusement ride.

(b)(1) The operator of an amusement ride shall immediately cease to operate any ride involved in a fatality or serious physical injury. The owner or operator shall notify the department of such accident within four (4) hours of its occurrence by telephone or facsimile. The owner or operator shall file a written accident report personally or by facsimile with the department within twenty-four (24) hours of the accident. Within twenty-four (24) hours after receipt of such report, the department shall initiate an investigation of the occurrence and an inspection of the ride. The department shall perform the inspection in a manner that proceeds with all practicable speed and minimizes the disruption of the amusement facility at which the amusement ride is located.

(2) Unless authorized in writing by the department, no amusement ride may be operated, moved, altered, repaired, or tampered with, except to protect life, limb, and property, following an accident involving a serious injury or death until the department has completed its inspection and investigation.

23-89-511. Amusement ride operators.

(a) Any person directly operating any amusement ride or attraction:

(1) Must be at least sixteen (16) years of age;

(2) Must be trained in the proper use and operation of the device;

(3) Must operate only one (1) ride at a time; and

(4) May not operate any amusement ride or attraction while intoxicated.

(b) For the purposes of this section, "intoxicated" means influenced or affected by the ingestion of alcohol, a controlled substance, any intoxicant, or any combination thereof, to such degree that the operator's reactions, motor skills, and judgment are substantially altered and the operator, therefore, constitutes a clear and substantial danger of physical injury or death to ride patrons.

23-89-512. Prohibited bungee operations.

The following bungee operations are prohibited:

(1) A bungee operation conducted with balloons, blimps, helicopters, or other aircraft;

(2) "Sand bagging," which is the practice of holding onto any object, including another person, while bungee jumping, for the purpose of exerting more force on the bungee cord to stretch it further, and then releasing the object during the jump causing the jumper to rebound with more force than could be created by the jumper's weight alone;

(3) Tandem or multiple bungee jumping, except for rides that the manufacturer has designed for multiple patrons; and

(4) Bungee jumping from any bridge, overpass, or any other structure not specifically designed as an amusement ride or attraction;

23-89-513. Posting ride safety rules required.

All requirements for rider safety within the control of the rider must be prominently posted in a manner reasonably expected to provide notice to the rider. Such requirements or restrictions should include:

(1) Any height or weight restrictions;

(2) Safety belt or bars or other safety restraint systems requirements; and

(3) Prohibitions against:

(A) Standing before cessation of the ride or attraction; and

(B) Horseplay.

23-89-514. Patron safety.

(a) All patrons on any amusement ride or attraction subject to this subchapter, at a minimum, shall:

(1) Obey the posted safety rules and oral instructions issued by the amusement ride owner or manager or such owner's employee or agent;

(2) Refrain from acting in any manner that may cause or contribute to injuring the patron or others, including:

(A) Interfering with the safe operation of the amusement ride;

(B) Not engaging any safety devices provided;

(C) Disconnecting or disabling a safety device except at the express instruction of the operator;

(D) Altering or enhancing the intended speed, course or direction of the amusement ride;

(E) Extending arms and legs beyond the carrier or seating area;

(F) Throwing, dropping or expelling an object from or toward an amusement ride; and

(G) Getting on or off an amusement ride or attraction except at the designated time and area, unless directed to do otherwise by an operator due to an emergency.

(b) Parents or guardians of patrons under the age of eighteen (18) years of age have a duty to ensure that the patron complies with the provisions of this section.

(c) Any person eighteen (18) years of age or older, who violates the provisions of this section may be charged with a Class A misdemeanor.

23-89-515. Nondestructive Testing.

(a) An owner may not operate an amusement ride for which the manufacturer recommends nondestructive testing, unless the owner complies with the manufacturer's standards for the testing and the ride meets the manufacturer's acceptance criteria.

(b) If manufacturer's nondestructive testing standards are unavailable for an amusement ride and the Department of Labor deems it necessary, the owner shall provide such

standards through a registered professional engineer or engineering agency or any individual qualified by training and experience to compile standards based upon the ride's specifications and history and using accepted engineering practices. The engineer or other qualified individual shall be approved by the Director of the Department of Labor and the ride must meet the criteria so established.

23-89-516. Records.

(a) The Director of the Department of Labor shall keep records and statistics by year of serious injuries and fatalities resulting from amusement ride accidents. Such records and statistics shall specify the year of the accident, type of injury, type of ride or attraction involved, and cause of the accident.

(b) Each owner or operator shall retain on the premises or with a portable amusement ride the following records:

(1) Proof of insurance coverage as required by this subchapter;

(2) The latest safety inspection report by the department and by the owner or operator's insurer;

(3) All maintenance and repair records for a period of one (1) year;

(4) All accident records for a period of one (1) year on premises although such records shall be maintained and subject to being made available to the director for a period of three (3) years;

(5) A record of employee or operator training for each employee authorized to operate, assemble, disassemble, transport, or conduct maintenance on an amusement ride or attraction; and

(6) A copy of any affidavit of nondestructive testing required by this subchapter.

23-89-517. Disposition of funds.

All money received under the provisions of this subchapter shall be deposited in the State Treasury to the credit of the Department of Labor Special Fund.

23-89-518. Amusement Ride Safety Advisory Board – Creation – Duties.

(a)(1) There is created an Amusement Ride Safety Advisory Board.

(2)(A) The board shall be appointed by the Governor.

(B) The Director of the Department of Labor or his or her designee shall be ex officio chair.

(C) The board shall consist of five (5) additional members:

(i) One (1) member of the board shall be the Director of the Department of Parks and Tourism, or his or her designee;

(ii) One (1) member of the board shall represent owners or operators of amusement rides which are portable in nature;

(iii) One (1) member of the board shall represent owners or operators of permanently placed amusement rides;

(iv) One (1) member of the board shall represent fair managers in Arkansas; and

(v) One (1) member of the board shall represent the general public.

(3)(A) Except for the Director of the Department of Labor and the Director of the Department of Parks and Tourism, the terms of office of the members shall be for four (4) years or until a successor is appointed.

(B) No member of the board shall be appointed to serve more than two (2) consecutive full terms.

(C) At the time of appointment or reappointment, the Governor shall adjust the length of terms to ensure that the terms of board members are staggered so that, insofar as is possible, an equal number of members shall rotate each year.

(b) The duties of the board shall be:

(1) To assist the Director of the Department of Labor with the formulation of rules and regulations regarding the safe operation of amusement rides; and

(2) To give the Department of Labor such counsel and advice as will aid it in the proper enforcement and administration of the provisions of this subchapter.

(3) Except the ex-officio chair and the Director of the Department of Parks and Tourism, the members of the board

may receive expense reimbursement and stipends in accordance with §25-16-901 et seq.

H. ELEVATOR SAFETY LAW

20-24-101. Definitions.

As used in this chapter:

(1) "Alteration" means any change made to an existing conveyance or to its hoistway, enclosure, or doors other than the repair or replacement of damaged, worn, or broken parts necessary for normal operation. The changing of the speed governor shall be considered an alteration;

(2) "Authorized representative" means the building department of cities, towns, or other governmental subdivisions designated by the Department of Labor to enforce certain provisions of this chapter;

(3) "Board" means the Elevator Safety Board described in §20-24-105;

(4) "Conveyance" means an elevator, dumbwaiter, escalator, moving sidewalk, automatic people mover, platform lift, or stairway chairlift.

(5) "Director" means the Director of the Department of Labor;

(6) "Department" means the Department of Labor;

(7) "Dormant elevator, dumbwaiter, or escalator" means an elevator or dumbwaiter whose cables have been removed, whose car and counterweight rest at the bottom of the shaftway, and whose shaftway doors are permanently boarded up or barricaded on the inside or an escalator whose main power feed lines have been disconnected;

(8) "Dumbwaiter" means a hoisting and lowering mechanism, driven by mechanical power, equipped with a car which moves in guides in a substantially vertical direction, the floor area of which does not exceed nine (9) square feet, whose total compartment height does not exceed four feet (4'), the capacity of which does not exceed five hundred pounds (500 lbs.), and which is used exclusively for carrying freight;

(9) "Elevator" means a hoisting and lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction;

(A) The term "elevator" shall not include a conveyor, chain or bucket hoist, construction hoist, or similar devices used for the primary purpose of elevating or lowering materials, nor shall it include tiering, piling, feeding, or similar machines or devices giving service within only one (1) story;

(B) The term "power elevator" shall mean those driven by the application of energy other than hand or gravity;

(C) "Hand elevators" shall mean those driven by manual power;

(D) The term "elevator" shall include vertical wheelchair lifts, inclined wheelchair lifts, and inclined stairway chair lifts installed in any location including a private, single-family dwelling for use by individuals with physical disabilities;

(10) "Escalator" means a power-driven, inclined, continuous stairway or runway used for raising or lowering passengers;

(11) "Freight elevator" means an elevator used for carrying freight and on which are permitted to ride only the operator and the persons necessary for loading and unloading and such other designated persons as may be authorized by the rules of the board;

(12) "New installation", "new elevator", "dumbwaiter", "escalator", or "new conveyance" means a complete elevator, dumbwaiter, escalator, or other conveyance installation, the application for the permit for the installation or relocation of which is filed on or after the effective date of application of the rules and regulations adopted by the board as provided in §20-24-106(a)-(c). All other elevators, dumbwaiters, escalators, or other conveyances shall be deemed to be existing installations; and

(13) "Passenger elevator" means an elevator that is used to carry persons other than the operator and persons necessary for loading and unloading and such other designated persons as may be authorized by the rules of the board.

20-24-102. State to have exclusive jurisdiction - Exception.

(a) No city, town, or other governmental subdivision shall have the power to make any ordinance, bylaw, or resolution providing for the licensing, inspection, construction, installation, alteration, maintenance, or operation of elevators, dumbwaiters, or escalators or for the qualifications and duties of operators thereof, within the limits of such city, town, or governmental subdivision and any ordinance, bylaw, or resolution heretofore made or passed shall be void and of no effect.

(b) Nothing in this chapter shall, however, limit the right of the city, town, or other governmental subdivision to enforce the provisions of this chapter as permitted by §20-24-104(b) or to determine the amount of the fees to be charged therefor as permitted by §20-24-117.

20-24-103. Penalties - Prosecution of violations.

(a)(1) Any person, owner, lessee, partnership, association, corporation, or inspector who violates any provision of this chapter shall be penalized by a civil fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000) for each offense.

(2) Each day during which a violation continues shall be a separate offense.

(b) Actions for recovery of the penalties provided by this section shall be instituted by the Department of Labor or its authorized representative and shall be in the form of a civil action before a court of competent jurisdiction.

(c) In addition to the penalties in subsection (a) of this section, the Director of the Department of Labor is authorized to petition any court of competent jurisdiction to enjoin or restrain violations of the provisions of this chapter.

20-24-104. Enforcement.

(a) Except where otherwise provided, the Department of Labor shall have the power, and it shall be its duty, to enforce the provisions of this chapter and the rules and regulations adopted by the board.

(b) In cities, towns, or other governmental subdivisions having a building department with qualified personnel to

enforce the provisions of this chapter or portions thereof, the Director of the Department of Labor may delegate the building department as the authorized representative of the Department of Labor to enforce and carry out the provisions of §§20-24-112 - 20-24-116 or any portion thereof as may be designated by him.

20-24-105. Elevator Safety Board - Creation - Members.

(a) There is created the Elevator Safety Board, consisting of five (5) members, one (1) of whom shall be the Director of the Department of Labor, who shall serve continuously, and four (4) of whom shall be appointed to the board by the Governor for terms of four (4) years.

(b) Upon the death, resignation, or incapacity of any member, the Governor shall fill the vacancy, for the remainder of the unexpired term, with a representative of the same interests as those of his predecessor.

(c) Of the four (4) appointed members:

(1) One (1) shall be a representative of the owners and lessees of elevators within this state;

(2) One (1) shall be a representative of the manufacturers of elevators used within this state;

(3) One (1) shall be a representative of an insurance company authorized to insure the operation of elevators in this state; and

(4) One (1) shall be a representative of the public at large.

(d) The board shall meet at the call of the director who shall designate in the call the time and place of meeting.

(e) The members of the board, except the director, may receive expense reimbursement and stipends in accordance with §25-16-901 et seq.

20-24-106. Elevator Safety Board - Powers and duties.

(a) It shall be the duty of the Elevator Safety Board to license elevator inspectors, elevator mechanics, and elevator contractors as provided in this chapter and to revoke or suspend any such license for cause.

(b) The board shall have the power and it shall be its duty to consult with engineering authorities and organizations studying and developing standard safety codes, including that of the

American National Safety Institute/American Society of Mechanical Engineers, and determine what rules and regulations governing the qualifications, training, and duties of elevator operators and the operation, maintenance, construction, alteration, and installation of elevators, dumbwaiters, and escalators and the inspection and tests of new and existing installations are adequate, reasonable, and necessary to provide for the safety of life, limb, and property and to protect the public welfare.

(c) Upon the determination, the board shall make, amend, or repeal from time to time rules and regulations as follows:

(1) Rules and regulations for the maintenance, inspection, tests, and operation of all elevators and escalators;

(2) Rules and regulations for the construction of new elevators, dumbwaiters, and escalators;

(3) Rules and regulations for the alteration of existing elevators, dumbwaiters, and escalators;

(4) Rules and regulations prescribing minimum safety requirements for all existing elevators, dumbwaiters, and escalators; and

(5) Rules and regulations prescribing the fees for construction permits, operating permits, acceptance inspections, initial inspections, and periodic inspections for new and existing elevators, escalators, and dumbwaiters.

(d) The board shall also have the power in any particular case to grant exceptions and variations which shall only be granted where it is clearly evident that they are necessary in order to prevent undue hardship or where the existing conditions prevent compliance with the literal requirements of the rules and regulations. In no case shall any exception or variation be granted unless, in the opinion of the board, reasonable safety will be secured thereby.

(e) It shall also be the duty of the board to hear and decide any appeals from the orders or acts of the Department of Labor or its authorized representative as provided in §20-24-119.

20-24-107. Elevator Safety Board - Adoption and amendment of rules and regulations.

(a)(1) A public hearing shall be held by the Elevator Safety Board prior to the adoption of any rules or regulations authorized by this chapter.

(2) Copies of such rules and regulations as are proposed by the board for adoption shall be made available to all interested parties at least thirty (30) days prior to the hearing.

(3) Notice of each hearing shall be published not less than fifteen (15) days prior to the date assigned for the hearing.

(4) The rules and regulations adopted by the board shall be effective and shall be applicable on and after the effective date specified by the board but in no case less than three (3) months after the adoption by the board.

(b) The rules and regulations adopted by the board shall be amended or repealed in the same manner in which they are adopted.

(c)(1) No amendment shall be made to the rules and regulations adopted by the board unless public hearings are held as provided in subsection (a) of this section.

(2)(A) Any person engaged in the inspection, alteration, construction, repair, or operation of elevators, dumbwaiters, or escalators or any owner, insurer, or lessee thereof, may, from time to time, by written petition to the Director of the Department of Labor, request that any rules and regulations adopted by the board under subsection (a) of this section be amended, or the director shall refer the petition to the board for its consideration and recommendation.

(B) The board shall hold public hearings with respect to the subject matter of the petition and shall thereafter approve or disapprove the petition.

(3) The amendments approved by the board shall become effective as provided in this section.

20-24-108. Licenses required - Qualifications.

(a)(1) The inspections of conveyances required by the provisions of this chapter shall be made by an elevator inspector licensed by the Elevator Safety Board.

(2) To be eligible for a license to inspect conveyances, the applicant or licensee shall:

(A) Have experience in designing, installing, maintaining, or inspecting conveyances to the extent established by regulation of the board;

(B) Successfully pass a written examination approved by the board;

(C)(i) Submit with his or her application for a license or renewal of a license proof of an insurance policy:

(a) Issued by an insurance company authorized to do business in Arkansas; and

(b) Providing general liability coverage for at least one million dollars ($1,000,000) for injury or death of a person and five hundred thousand dollars ($500,000) for property damage.

(ii) The provision for liability insurance required by subdivision (a)(2)(C)(i) of this section shall not apply to elevator inspectors employed by the Department of Labor; and

(D)(i) Have no financial interest in any business or operation which manufactures, installs, repairs, modifies, services or conveyances.

(ii) This qualification does not prohibit employees of insurance companies insuring conveyances from obtaining a license as an elevator inspector.

(b)(1)(A) Unless working under the direct supervision of a licensed elevator contractor, no person shall:

(i) Erect, construct, alter, replace, maintain, remove, or dismantle any conveyance contained within a building or structure without an elevator mechanic license; or

(ii) Wire any conveyance from the mainline feeder terminals on the controller without an elevator mechanic license.

(B) A licensed elevator mechanic is not required for removing or dismantling a conveyance:

(i) Destroyed as a result of the complete demolition of a secured building or structure; or

(ii) When the demolition to the hoistway or wellway prevents access without endangerment.

(2) To be eligible for an elevator mechanic license, the applicant or licensee shall:

(A) Have three (3) years of verifiable work experience in constructing, maintaining, servicing, and repairing

conveyances to the extent established by regulation of the board; and

(B) Successfully pass a written examination approved by the board.

(c)(1) Except as provided in subsections (a) and (b) of this section, no person other than an elevator contractor may install, construct, alter, service, repair, test, maintain, or perform electrical work on a conveyance.

(2) To be eligible for an elevator contractor license, the applicant or licensee shall:

(A) Have in his or her employment a properly licensed elevator mechanic; and

(B) Submit with his or her application for a license or renewal of a license proof of an insurance policy:

(i) Issued by an insurance company authorized to do business in Arkansas; and

(ii) Providing general liability coverage for at least one million dollars ($1,000,000) for injury or death of a person and five hundred thousand dollars ($500,000) for property damage.

20-24-109. Application and examination for licenses – Issuance and Renewal.

(a)(1) A written application for the examination and license for elevator inspector, elevator mechanic, or elevator contractor shall be made upon a form to be supplied by the Elevator Safety Board upon request and shall be accompanied by a statement of the applicant's experience together with an examination fee not to exceed the sum of one hundred fifty dollars ($150).

(2) The examination shall be given not more than six (6) months from the date when the applicant makes the application.

(3)(A) If the applicant is qualified and successfully passes the applicable examination specified in this section, then upon payment of a license fee, he or she shall be entitled to:

(i) A one-year license as an elevator inspector or elevator contractor; or

(ii) a two-year license as an elevator mechanic.

(B) The license fee and the license renewal fee shall be established by the board, but in no event shall either fee exceed the sum of one thousand dollars ($1,000).

(4)(A) There shall be no limit to the number of times an applicant may seek a license as provided in this section, except that a rejected applicant may not make application within six (6) months from the date on which he or she is notified that he or she has failed to qualify.

(B) A license fee shall be paid for the initial examination and each subsequent examination.

(b)(1) The board may license a person as an elevator inspector, elevator mechanic, or elevator contractor without examination if he or she holds an equivalent license for a state or city that has a standard of examination substantially equal to that provided for in §20-24-108.

(2) For a period of one (1) year after August 12, 2005, the board shall issue a mechanic's license to an applicant who provides verifiable proof that he or she worked without direct supervision as an elevator constructor or maintenance or repair person for at least three (3) years before August 12, 2005.

(c) The board shall renew a license after receiving:

(1) Payment of the license renewal fee; and

(2) Submission of proof that the licensee has satisfied the continuing education requirements established by rule or regulation of the board.

(d)(1) Whenever an emergency exists and the board determines that there are not enough licensed elevator mechanics to perform the work necessary to provide for the safety of life, limb, and property and to protect the public welfare, the board may waive the requirements of this subchapter and issue an emergency elevator mechanic license that may be valid for no longer than thirty (30) days.

(2) Whenever the board determines that there are not enough licensed elevator mechanics available to perform work necessary for the completion of a project for which the Department of Labor has issued a permit under §20-24-115(d), the board may waive the requirements of this subchapter and issue a temporary elevator mechanic license that may be valid for no longer than thirty (30) days.

(3) The board may renew an emergency or temporary license if the circumstances justifying its original issuance continue.

20-24-110. Inspectors - Prohibited activities - requirements.

(a) No elevator inspector shall inspect an elevator, escalator, or dumbwaiter if the inspector, or any member of his immediate family, has a financial interest in the building in which the elevator, escalator, or dumbwaiter is located, or in any business which occupies the building in which the elevator, escalator, or dumbwaiter is located.

(b) No elevator inspector or any member of his immediate family shall have or maintain a financial interest in any business which manufactures, installs, repairs, alters, or services elevators, escalators, or dumbwaiters.

(c) No elevator inspector shall recommend or refer one (1) of his clients or customers to a specific business, firm, or corporation which manufactures, installs, repairs, alters, or services elevators, escalators, or dumbwaiters.

(d) On or before the last day of January of each year, all licensed elevator inspectors shall file with the Department of Labor a financial disclosure statement on forms provided by the department and approved by the Elevator Safety Board. Such forms shall include, but not be limited to, the following:

(1) The name and address of any corporation, firm, or enterprise in which the person has a direct financial interest of a value in excess of one thousand dollars ($1,000). Policies of insurance issued to himself or his spouse are not to be considered a financial interest;

(2) A list of every office or directorship held by himself or his spouse, in any corporation, firm, or enterprise subject to the jurisdiction of the board;

(3) A list showing the name and address of any person, corporation, firm, or enterprise from which the person received compensation in excess of one thousand five hundred dollars ($1,500) during the preceding year; and

(4) A list showing the name and address of any person, corporation, firm, or enterprise from which the persons received compensation in excess of twelve thousand five hundred dollars ($12,500) during the preceding year.

20-24-111. Maintenance.

Every elevator, dumbwaiter, and escalator shall be maintained by the owner or lessee in a safe operating condition so that it conforms to the rules and requirements of the Elevator Safety Board as adopted under §20-24-107 (a) and (b).

20-24-112. Testing and inspection required.

(a) All new and existing elevators, dumbwaiters, and escalators, except dormant elevators, dumbwaiters, and escalators, shall be tested and inspected in accordance with the following schedule:

(1) INITIAL INSPECTION AND TEST OF NEW OR ALTERED INSTALLATIONS. Every new or altered elevator, dumbwaiter, and escalator shall be inspected and tested in conformity with the applicable rules and regulations adopted by the board before the operating permit required by §20-24-116 is issued. The inspections shall be made by a licensed elevator inspector in the employ of the Department of Labor or its authorized representative;

(2) INITIAL INSPECTION OF EXISTING ELEVATORS, DUMBWAITERS, AND ESCALATORS. The owner or lessee of every existing passenger elevator or escalator shall cause it to be inspected within three (3) months, and the owner or lessee of every existing freight elevator and dumbwaiter shall cause it to be inspected within six (6) months after the effective date of the rules and regulations adopted by the board under §20-24-107 (a) and (b), except that the department or its authorized representative may, at its discretion, extend the time specified in this subdivision for making inspections; and

(3) PERIODIC INSPECTIONS OF ALL ELEVATORS, DUMBWAITERS, AND ESCALATORS. The owner or lessee shall cause an inspection of every power passenger elevator and escalator to be made periodically every sixth calendar month, of every power freight elevator every twelfth calendar month, and of every dumbwaiter and elevator driven by manual power every twelfth calendar month, following the month in which the initial inspection required by subsections

(a)(1) and (a)(2) of this section has been made. However, any such inspection may be made during the month following the calendar month during which such inspection is due.

(b)(1) The inspections required by subdivisions (a)(2) and (3) of this section shall be made only by elevator inspectors who have been licensed in accordance with the provisions of §§20-24-108 and 20-24-109. The elevator inspectors shall not, however, be required to make any tests.

(2) Tests required by the rules and regulations to be made by the owner, the lessee, or the authorized agent of either shall be made by a person qualified to perform such service in the presence of a licensed elevator inspector in the employ of the department or its authorized representative.

20-24-113. Report of inspection.

(a) A report of every required inspection shall be filed with the Department of Labor or its authorized representative by the inspector making the inspection, on a form approved by the department or its authorized representative, within thirty (30) days after the inspection or test has been completed.

(1) For the inspections required by §20-24-112(a)(2), the report shall include all information required by the department in order to determine whether the owner or lessee of the elevator, escalator, or dumbwaiter has complied with those rules and regulations adopted by the Elevator Safety Board under §20-24-107 (a) and (b) which are applicable.

(2) For the inspection required by §20-24-112(a)(1), the report shall indicate whether the elevator, dumbwaiter, or escalator has been installed in accordance with the detailed plans and specifications approved by the department or its authorized representative under §20-24-115(d) and (e) and meets the requirements of the applicable rules and regulations adopted by the board under §20-24-107(a) and (b).

(b) In the event that the report required by subsection (a) of this section is not filed within thirty (30) days after the final date when the elevator, dumbwaiter, or escalator should have been inspected as required by §20-24-112(a)(2), the department shall designate a licensed inspector in its employ to make the inspection and report required by subsection (a) of this section.

(c)(1) For each inspection and report made at the direction of the department, the owner, lessee, or insurance company responsible for the report of inspection shall pay to the department a fee of one hundred dollars ($100.00), unless otherwise provided by the board.

(2) The fee shall be paid directly to the department and shall be the only fees or charges for which such owner, lessee, or insurance company shall be liable for the inspection required by §20-24-112(a).

20-24-114. Additional inspections.

(a) In addition to required inspections, the Department of Labor or its authorized representative may designate a licensed inspector in its employ to make such additional inspections as may be required to enforce the provisions of this chapter and the rules and regulations adopted by the Elevator Safety Board under §20-24-107(a) and (b).

(b) The fee for conducting three-year load tests and five-year load tests shall be no more than thirty-five dollars ($35.00).

20-24-115. New construction, relocation, or alteration.

(a)(1) On and after the effective date of rules and regulations adopted by the board under §20-24-107(a) and (b), detailed plans and specifications of the elevator, dumbwaiter, or escalator to be thereafter installed, relocated or altered shall be submitted by the contractor, or in the absence of an installing contractor, by a person or the owner, to the Department of Labor. An application for a construction or alteration permit on forms to be furnished or approved by the department will be submitted at the same time.

(2) Repairs or replacements normally necessary for maintenance may be made on existing installations with parts equivalent in material, strength, and design to those replaced; no plans or specifications or applications need be filed for the repairs or replacements.

(b) All companies, owners, lessees, or persons engaged in this type of work within the State of Arkansas shall be approved and registered by the department.

(c) Failure to comply with subsections (a) or (b) of this section subjects all to a penalty as described in §20-24-103 (a).

(d) A construction permit shall be issued by the department or its authorized representative to the installing contractor or, in his absence, the owner, for every new elevator, dumbwaiter, or escalator installation or alteration before the installation thereof is started. The department or its authorized representative shall issue the permit if the plans and specifications required under subsection (a) of this section indicate compliance with the applicable rules and regulations adopted by the board under §20-24-107 (a) and (b).

(e) Any person who installs an elevator, dumbwaiter, or escalator which does not meet the specifications of this chapter shall be liable for all expenses necessary to bring said elevator, dumbwaiter, or escalator into compliance with this chapter.

20-24-116. Operating permits.

(a)(1) Operating permits shall be issued by the Department of Labor within the time limits specified in this section to the owner or lessee of every new or altered elevator, dumbwaiter, and escalator and of every existing elevator, dumbwaiter, and escalator where the inspection report indicates compliance with the applicable sections of this chapter.

(2) No permits shall be issued if the fees required by §20-24-117 have not been paid.

(3) The limits shall be thirty (30) days for existing elevators, dumbwaiters, and escalators and seven (7) days for new and altered elevators, dumbwaiters, and escalators after the required date for filing the inspection report required by §20-24-113(a) unless time is extended by the department. No elevator, dumbwaiter, or escalator shall be operated by the owner or lessee thereof after the dates specified in this section unless the operating permit has been issued.

(4)(A) The annual fee to be charged for the operating permit issued under the provisions of this chapter shall be as follows:

300-500 lbs. Special personnel elevators plus

(i) Dumbwaiters……..$30.00 annually

(ii) Elevators and wheelchair lifts……$50.00 annually

(iii)Escalators and moving walks.. …..$85.00 annually

(B) A twenty percent (20%) penalty may be assessed when the fee is past due by thirty (30) days.

(b)(1) The operating permit shall indicate the type of equipment for which it is issued and in the case of elevators shall state whether passenger or freight and shall also state the contract load and speed for the elevator, dumbwaiter, or escalator.

(2) The permit shall be posted conspicuously in the car of the elevator and on or near the dumbwaiter or escalator.

(3) It shall be extended by endorsement of the department or its authorized representative after each periodic inspection required by §20-24-112 (a)(3) and shall not be valid unless so endorsed.

(c)(1) If the inspection report, required by §20-24-113, indicates failure of compliance with the applicable rules and regulations approved by the Elevator Safety Board under §20-24-107 or with the detailed plans and specifications approved by the department or its authorized representative under §20-24-115(d) and (e), the department or its authorized representative shall give notice to the owner or lessee or the person filing plans and specifications of changes necessary for compliance with the rules and regulations. After the changes have been made, the department or its authorized representative shall issue an operating permit.

(2) If the inspection report required by §20-24-113 indicates that an elevator, dumbwaiter, or escalator is in an unsafe condition, so that its continued operation may be dangerous to the public safety, then the department or its authorized representative may, at its discretion, require the owner or lessee to discontinue the use thereof until it has been made safe and in conformity with the rules and regulations of the board.

(d) If the department or its authorized representative has reason to believe that any owner or lessee to whom an operating permit has been issued is not complying with the applicable rules and regulations adopted by the board under § 20-24-107, it shall so notify the owner or lessee and shall give notice of a date for a hearing hereon to the owner or lessee. If, after hearing, it shall find that the owner or lessee is not complying with the rules and regulations, it shall revoke the permit.

(e)(1) Pursuant to regulation of the board, the department may issue a temporary certificate of operation for a period not to exceed ninety (90) days for new installations.

(2) The fee for a temporary certificate of operation shall be established by the board in an amount not to exceed one hundred dollars ($100).

(f) An application for a variance shall be submitted to the department with the fee established by the board in an amount not to exceed one hundred dollars ($100).

20-24-117. Fees.

(a) The following fees shall be paid to the Department of Labor for each passenger, freight, or one-man elevator, or dumbwaiter installation permit:

(1) Elevators ..... $ 150.00
(2) Escalators and moving walks 200.00
(3) Dumbwaiters 100.00
(4) Wheelchair lifts 100.00
(5) Workmen's hoists..... 200.00

(b) A fee of not less than five dollars ($5.00) and not more than one hundred dollars ($100) shall be paid to the department for installation permits for all other types of elevators, escalators, power lifts, or moving walks.

(c) A final inspection fee and the fee for the initial operating permit are included in the installation permit fee. If a scheduled final inspection is canceled without due notice to the department or if the elevator is not complete in the judgment of the inspector, an additional fee of one hundred dollars ($100) shall be charged to the elevator contractor for an additional final inspection.

(d) Major alterations may be made upon obtaining a permit, which requires a payment of a one-hundred-dollar fee.

(e) A fee of seventy-five dollars ($75.00), or as otherwise prescribed by the Elevator Safety Board, shall be paid to the department for witnessing the performance of all safety tests as outlined in §§20-24-112 - 20-24-114.

11-24-118. Braille tags in elevators in publicly owned buildings.

(a) In all publicly owned buildings containing passenger elevators, braille tags shall be affixed on or immediately adjacent to all elevator pushbuttons, levers, or switches in order that blind persons may operate the elevators properly without assistance from sighted persons.

(b) For the purposes of this section, "publicly owned buildings" includes those buildings which are owned or operated by a municipal, county, or state government.

20-24-119. Appeals.

(a) Any person aggrieved by an order or act of the Department of Labor or its authorized representative under this chapter may, within fifteen (15) days after notice thereof, appeal from the order or act to the board, which shall, within thirty (30) days thereafter, hold a hearing of which at least fifteen (15) days' written notice shall be given to all interested parties.

(b) The Elevator Safety Board shall, within thirty (30) days after the hearing, issue an appropriate order modifying, approving, or disapproving the order or act.

(c) A copy of the order by the board shall be served upon all interested parties.

(d) Within thirty (30) days after any order or act of the board, any person aggrieved thereby may file a petition in the chancery court of the county in which the aggrieved person resides, for a review thereof.

(e) The court shall summarily hear the petition and may make any appropriate order or decree.

20-24-120. Exemption.

Conveyances installed in private single-family dwellings shall be exempt from the testing and inspection requirements of §20-24-112 and the permitting requirements of §§20-24-115 and 20-24-116.

I. REGULATION OF MINES

1. State Mine Inspector

[**NOTE**: 1971 Arkansas Acts 38, §15 abolished the office of State Mine Inspector and transferred all its powers, duties, and functions to the Arkansas Department of Labor.]

11-7-201. Act cumulative.

This act shall not repeal any of the mining laws of the state, except wherein it specifically conflicts, but shall be cumulative to all mining laws in force prior to July 1, 1917.

11-7-202. Penalties.

(a)(1) Any person who shall willfully obstruct or hinder the mine inspector in the discharge of his duties and every owner, lessee, agent, or manager of a mine who refuses or neglects to furnish the mine inspector the means necessary for making entry, inspection, examination, or inquiry under the mining laws of this state shall be deemed guilty of a misdemeanor.

(2) Upon conviction the person shall be punished as provided in subsection (c) of this section.

(b)(1) Should the mine inspector willfully fail or refuse to perform any of the duties required under the provisions of the mining laws of this state, he shall be deemed guilty of a misdemeanor.

(2) Upon conviction he shall be fined in a sum not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) and, upon a second conviction for such failure or refusal, shall be removed from office by the Governor and his successor appointed within thirty (30) days from the date of such removal.

(c)(1) Any owner, agent, lessee, or other person convicted of the violation of any of the provisions of the mining laws of this state or failing in any manner to comply therewith shall be deemed guilty of a misdemeanor.

(2) Upon conviction, the person shall be fined in any sum not less than fifty dollars ($50.00) nor more than five hundred

dollars ($500) except where provisions of the mining laws otherwise provide penalties.

(d) Each day any violation or failure shall continue on the part of any owner, agent, lessee, or other person shall be deemed a separate offense.

11-7-203. Prosecution of violations.

It shall be and is made the duty of the prosecuting attorney in the district wherein the mine inspector shall arrest or cause to be arrested any person violating the provisions of the mining laws of the state to at once take charge of and prosecute the person with reasonable diligence.

11-7-204. Appointment, term, and qualifications.

(a) The Governor shall appoint a State Mine Inspector, who shall hold office for a term of two (2) years, beginning on July 1 of every odd-numbered year and until his successor is appointed and qualified.

(b)(1) The mine inspector shall be a citizen of good repute and temperate habits, and he must have had five (5) years' experience as a practical miner.

(2) While holding office, the mine inspector shall not be connected with or engaged, directly or indirectly, as owner, operator, agent, or director of any coal mine or other mining interest.

(c) The Governor alone shall have the power to remove a mine inspector for cause.

(d)(1) Before entering upon the duties of his office and within twenty (20) days after his appointment, the mine inspector shall make and execute a bond to the State of Arkansas, with one (1) or more sufficient sureties, in the sum of five thousand dollars ($5,000), conditioned upon the faithful performance of his duties, which shall be approved by the Governor.

(2) When the bond is so approved, he shall also take oath of office prescribed by the Arkansas Constitution.

(3)(A) In the event that the mine inspector shall fail to make and execute the bond within the time prescribed by subdivision (d)(1) of this section, his appointment shall be declared void.

(B) It is made the duty of the Governor to appoint and have qualified a proper person in his stead, as contemplated by the provisions of this section.

11-7-205. Office, staff, and compensation.

(a) The State Mine Inspector shall have an office which may be located in Fort Smith, and shall safely keep all records, papers, documents, and other property pertaining to or coming into his hands or her hands by virtue of his or her office and deliver them to his or her successor.

(b)(1) The mine inspector shall be allowed the salary, expenses, and office and clerical assistance as provided by law.

(2)(A) Salaries and expenses shall be paid out of the General Revenue Fund Account of the State Apportionment Fund upon vouchers issued by the mine inspector, pursuant to appropriations duly made.

(B) The State Auditor shall issue the warrants on the voucher, and the State Treasurer shall pay the same.

(c) The mine inspector, in addition to his salary and other expenses, shall be allowed one (1) stenographer, who shall act as clerk for the mine inspector and who shall receive a salary to be paid out of the State Treasury, as other salaries are paid.

(d)(1) He shall also be allowed for office expenses, in keeping and maintaining his office, a sum not to exceed the sum of four hundred fifty dollars ($450) per annum, to be paid out of the State Treasury, as other expenses of his office are paid.

(2) He shall also be allowed all necessary postage, stationery, and other expenses of a similar character necessary for the transaction of the business of the office.

(e) In addition to his salary and other expenses provided for in this section, he shall be allowed necessary traveling expenses while in the performance of the duties of the office, which shall not exceed the sum of one thousand two hundred dollars ($1,200) per annum.

(f) The salary and expenses shall be paid as in the case of other state officers.

11-7-206. State Mine Inspector - Powers and duties.

(a) In addition to the duties imposed upon him by law, the State Mine Inspector shall:

(1) Recommend to the various operators of coal mines throughout the state all safety regulations that he shall deem advisable; and

(2) Investigate the necessity and feasibility of purchasing and maintaining safety, first aid, rescue, or recovery of equipment that he shall find feasible and necessary.

(b)(1) If he shall find the purchase and maintenance of the above described equipment feasible and necessary, he is authorized to purchase and maintain the equipment after the legislative appropriation of necessary funds from the General Revenue Fund Account of the State Apportionment Fund, as directed by such appropriation, and the expenses thereof shall be paid in the same manner as the items provided for in §11-7-205 (b) are directed to be paid.

(2) All equipment as above described must be such that it will be adaptable for use in and will be available for use in any and all coal mines in the State of Arkansas.

(c) In his annual report, the mine inspector shall enumerate all recommendations which he has made for safety measures, and the result thereof; and in the report, he shall recommend to each biennial session of the General Assembly such measures as he shall deem necessary for the promotion of safety in coal mines.

(d) He shall also request appropriations of all funds necessary to accomplish the purposes of this section and §11-7-205.

11-7-207. Assistant State Mine Inspector.

(a) There is created the office of Assistant State Mine Inspector of the State of Arkansas.

(b) His term of office shall be for a period of two (2) years, to run coextensive with the term of the State Mine Inspector, and until his successor has been appointed and qualified.

(c) He shall be appointed by the Governor and work under the direction of the mine inspector.

(d) He may be removed by the Governor for neglect of duty or for any other reasonable cause.

(e) The assistant mine inspector shall have been a resident of the State of Arkansas for the number of years and possess the same qualifications as are required of the mine inspector.

(f)(1) Before entering upon the discharge of his duties as assistant mine inspector, he shall take and subscribe to the oath of office prescribed by law for the mine inspector and shall execute a bond to the State of Arkansas, with approved security, in the sum of five thousand dollars ($5,000), conditioned upon the faithful performance of his duties as such official.

(2) The bond shall be approved as in the case of the mine inspector and, when so approved, shall be filed in the office of the Secretary of State.

11-7-208. Inspection of mines.

(a) The State Mine Inspector shall devote his entire time to the duties of the office.

(b)(1) It shall be the duty of the mine inspector to examine all mines as often as necessary and not less often than once every three (3) months.

(2) The employees of any mine, as contemplated by the mining laws of this state, shall have authority to call the mine inspector at any time in cases of emergency for the enforcement of the mining laws of this state.

(c) Inspections shall be made, and the mine inspector shall keep a record of inspections, which shall be included in his annual report to the Governor, of:

(1) The works and machinery used or operated by any mine;

(2) The state and condition of the mines as to ventilation, circulation, and condition of the air, drainage, and the number of accidents, injuries, or deaths occurring in or about the mine, the number of persons employed, and the extent to which the laws relating to mines and mining are observed;

(3) The progress made in improvements for the safety and health sought to be obtained by the provisions of the mining laws of this state, together with all other such facts and information of public interest concerning the conditions of

mine development and progress in this state as may be deemed useful and proper.

(d)(1) Should the mine inspector find any violations of the mining laws of this state by any owner, lessee, or agent in charge of any mine, notice shall immediately be given to the owner, lessee, or agent in charge of the mine of the neglect or violation thereof, and, unless it is rectified within a reasonable time, the mine inspector shall institute a prosecution under the laws of the state.

(2) If the mine inspector finds any matter, thing, or practice in or connected with a mine to be dangerous or defective, which makes it unsafe for persons employed therein, notice in writing to the owner, lessee, or agent of such dangerous or unsafe condition shall be given, and the condition shall be remedied by the owner, lessee, or agent without unnecessary delay.

(e)(1) For the purpose of making the inspection and examination as contemplated by this section, the mine inspector shall have the right to enter any mine at any reasonable time, by day or night, but in such manner as shall not necessarily obstruct the workings of the mine.

(2) The owner, lessee, or agent is required to furnish the means necessary for the entry and inspection.

(3) The inspection and examination, as contemplated by this section, shall extend to all coal mines where the mines are operated by shaft, slope, or drift.

11-7-209. Owner, agent, or operator to facilitate inspections - Failure to comply.

(a) The owner, agent, or operator of a mine is required to furnish all necessary facilities for entering and making the examinations and inspection, and, if the owner, agent, or operator refuses to permit the inspection or to furnish the necessary facilities for entering and making the examinations and inspection, the inspector shall file his affidavit, setting forth the refusal, before the judge of the circuit court in the county in which the mine is located.

(b)(1) The judge of the court is granted the power to issue an order commanding the owner, agent, or operator to appear before the judge at chambers or before the circuit court to show

cause why he refuses to permit the inspection or furnish the necessary facilities for entering and making the examination.

(2) Upon hearing, the judge of the court shall have the power to fine the agent, owner, or operator in any sum not less than fifty dollars ($50.00).

11-7-210. Action to enjoin unsafe working conditions.

(a)(1) If the inspector shall, after examination of any mine and the works and machinery pertaining thereto, find the mine worked contrary to the provisions of this act or unsafe for the workmen employed therein, the inspector shall file a complaint before the judge of the circuit court in vacation or the circuit court when in session, in the name of the state, without cost or bond, showing that the owner, agent, or operator has failed to comply with the provisions of this act.

(2) The court or judge, after hearing the cause, shall, if satisfied the law has not been complied with, restrain or enjoin the owner, agent, or operator from operating the mine until the law is complied with.

(b)(1) In all proceedings before the court or judge, the owner, agent, or operator shall have two (2) days' notice of the intended application for restraining order.

(2) The judge or the court shall hear the complaint on affidavits or other testimony that may be offered in support, as well as in opposition thereto, and, if sufficient cause appear, the court or judge in vacation, by order shall prohibit the further working of any mine in which persons may not be safely employed, or which is worked contrary to the provisions of this act, until the mine has been made safe and the requirements of this act shall have been complied with.

(3) The court shall award such costs in the proceedings as may be just, but any proceedings so commenced shall be without prejudice to any other remedy permitted by law for enforcing the provisions of this act.

11-7-211. Authority to arrest violators or clear mine - Injunctive relief for owner.

(a) The State Mine Inspector is empowered concurrently with the sheriffs and constables throughout the state to make arrests for any violations of the mining laws of this state, but he

shall make no arrest until after notice has been given as provided in this act.

(b)(1) Where, in the opinion of the mine inspector, there is imminent danger to the life or health of the miners or employees in the mine, the inspector shall at once notify the person in charge of or operating the mine in which the dangerous condition exists to immediately remove the danger. On failure to remove the dangerous condition without unnecessary delay, the inspector shall order the mine or dangerous portion thereof cleared of all persons except those necessary to remove or remedy the dangerous condition.

(2) Upon the clearing of any mine of persons employed therein, as provided in this subsection, any owner, lessee, or agent in charge of or operating the mine may apply to the chancery court within whose jurisdiction the mine lies for a writ of injunction to enjoin the mine inspector from continuing the prevention of the operation of the mine. Whereupon, the chancellor of the court, either in term or vacation, shall at once proceed to hear and determine the case, and if the cause appears to be sufficient after hearing the parties and their evidence, as it like cases, the chancellor shall sustain or overrule the mine inspector.

2. Regulation of Operation

11-7-301. Penalty for endangering mine or miners.

(a) Any miner, workman, or other person who shall knowingly injure any water gauge, barometer, air course, or brattice or shall obstruct or throw open any airway, or carry any open flame lamp, or matches, into any mine or shall handle or disturb any part of the machinery of the hoisting engine or open a door to a mine, and not have the door closed again, whereby danger is produced, either to the mine or to those who work therein or who shall enter any part of the mine against caution or who shall disobey any order given in pursuance of this chapter, or who shall do any willful act whereby the lives and health of the persons working in the mine, or the security of the mine or miners of the machinery thereof is endangered, shall be deemed guilty of a misdemeanor.

(b) Upon conviction, the miner, worker, or other person shall be punished by a fine or imprisonment at the discretion of the court or jury hearing the case.

11-7-302. Right of action for death or injury.

(a) For any injury to persons or property occasioned by willful violation of this chapter or willful failure to comply with any of its provisions, a right of action shall accrue to any party injured for any direct damages sustained thereby.

(b) Should death ensue from any injury, a cause of action shall survive in favor first of the widow and minor children of the deceased, and if there is no widow nor minor children, then in favor of the father, then the mother, and then the brothers and sisters and their descendants.

11-7-303. Map or plan of mine.

(a) The owner, agent, or operator of each and every coal mine in this state shall make, or cause to be made, an accurate and correct map or plan of the entire workings of the mine and every vein or deposit thereof showing the general inclination of the strata, together with any material deflections in the workings and the boundary lines of the area belonging to the mine, and deposit a true copy of the map or plan with the clerk of the county court of the county wherein the mine or any part thereof may be located.

(1) The map or plan shall be so deposited during the period from January 1 to June 1 of each and every year and the owner, agent, or operator shall furnish the clerk and inspector with a sworn statement and further map or plan of the progress of the workings of the mine from the date of the last survey reported up to the making of same, and the inspector shall correct his map or plan in accordance therewith.

(2) When any mine is worked out or abandoned, that fact shall be reported to the inspector without delay, and the map or plan in the office of the clerk aforesaid shall be corrected and verified to conform to the facts then existing.

(3) All mine maps or plans must show the location of door, overcast or air bridges, and the direction all air currents are traveling shall be indicated by arrows.

(4) The clerk of the county court of the county in which mines are located shall file and safely keep all maps or plans of any mine, deposited in his office, and they shall be recorded as maps and plans of town sites are now recorded.

(b) The State Mine Inspector shall send maps and plans of mines in his possession to the Secretary of State for safekeeping at the end of every two (2) years, during the month of July. The mine maps and plans shall be kept in a vault for this special purpose for the guidance of anyone interested therein.

(c)(1) The owner, agent, or operator of any mine neglecting, failing, or refusing to furnish the inspector and county clerk a statement, map or plan or addition thereto at the time and in the manner provided in subsection (a) of this section shall be deemed guilty of a misdemeanor and on conviction shall be fined in any sum not less than one hundred dollars ($100), nor more than five hundred dollars ($500).

(2) Each day the neglect, failure, or refusal continues shall constitute a separate offense.

(3) This penalty shall be in addition to the rights conferred upon the mine inspector by law to have the maps or plans made at the expense of the owner, agent, or operator.

(d) Whenever the owner, agent, or operator, of any mine shall neglect, fail, or refuse to furnish the inspector and clerk, as provided in subsection (a) of this section, with a statement, map, or plan or additions thereto, at the time and in the manner therein provided, the inspector is authorized to cause an accurate map or plan of the workings of the mine to be made at the expense of the owner, agent, or operator, and the cost thereof may be recovered by the inspector from the owner, agent, or operator.

11-7-304. Mine openings and escape ways.

(a) Every underground mine shall have at least two (2) separate surface openings.

(1) Main slope and drift openings shall be separated by at least twenty-five feet (25') of natural ground in all mines opened after June 9, 1949.

(2) New shafts and partitions therein, made after June 9, 1949, shall be fireproof.

(3) Buntons and guides may be of wood.

(4) Mine openings at isolated locations, where there is danger of fire entering the mine, shall have adequate protection against surface fires entering the mine.

(b) Not more than twenty (20) persons shall be allowed at any one (1) time in the mine until a connection has been made between the two (2) mine openings, and work shall be prosecuted with reasonable diligence. When only one (1) opening is available, owing to final mining of pillars, not more than twenty (20) persons shall be allowed in the mine at any one (1) time.

(c) There shall be at least two (2) travelable passageways, to be designated as "escapeways" from each working section to the surface, whether the mine openings are shafts, slopes, or drift. These shall be kept in safe condition for travel and reasonably free from standing water and other obstructions.

(1) One of the designated escapeways may be the haulage road.

(2) One of the escapeways must be ventilated with intake air.

(3) At mines now operating with only one (1) free passageway to the surface, immediate action shall be taken to provide a second passageway.

(d) Where the designated escapeways are shafts, they shall be equipped with hoist and cage or with travelable stairways or ladders.

(1) No shaft more than thirty feet (30') deep, sunk after June 9, 1949 shall be equipped with ladders.

(2)(A) Stairways shall be of substantial construction, set at an angle not greater than forty-five degrees (45^o) with the horizontal, and equipped on at least one (1) side with a suitable handrail.

(B) Landing platforms shall be at least two feet (2') wide and four feet (4') long and shall be railed properly.

(3) Ladders shall be anchored securely.

(4) Where ladders or stairways set at an angle greater than forty-five degrees (45^o) are not installed, their use may be continued, provided they are of substantial construction, with platforms at intervals of not more than thirty feet (30') and equipped with a handrail in the case of stairways.

(e)(1) If a designated escapeway is a slope of not more than forty-five degrees (45^o), it shall be equipped with a stairway of adequate walkway with cleats.

(2) If the slope is more than forty-five degrees (45^o), stairways shall be installed.

(f) Direction signs shall be posted conspicuously to indicate man ways and designated escapeways.

(g) Good housekeeping shall be practiced underground.

11-7-305. Ventilation generally.

(a) The owner, agent, or operator of every mine, whether operated by shaft, slope, or drift, shall provide and maintain for every mine a sufficient amount of ventilation, to be determined by the inspector, not less than two hundred cubic feet (200 cu. ft.) of air per man per minute, measured at the foot of the downcast, which shall be circulated to the face of every working place throughout the mine, so that the mine shall be free of standing gas of whatsoever kind.

(b) In all mines where firedamp is generated, ever working place where firedamp is known to exist shall be examined every morning with a safety lamp by a competent person before any other persons are allowed to enter.

(c) The ventilation required by this section may be produced by any suitable appliances.

11-7-306. Regulation of air currents.

(a) Air regulation of all slopes, drifts, or shafts used for hoisting or hauling coal shall be made at the intake of air into the mine, except at the option of the owner or by direction of the State Mine Inspector, and all air that goes into the mine shall be so split that not more than fifty (50) employees will be working on each split of air, and not less than two hundred cubic feet (200 cu. ft.) of air per man shall pass each working face per minute, and the air shall be sufficient to dilute all noxious or explosive gases.

(b) It shall be the duty of the mine inspector to measure the air at all working faces in making his inspection.

(c) The machinery and appliances used for conducting or driving the air into mines shall be so installed, arranged, and

adjusted that the air currents may be easily and speedily reversed in emergencies.

11-7-307. Manner of working room and pillar plan mine.

(a) The owner, agent, lessee, or operator of any coal mine in this state, if the mine is worked on the room and pillar plan, shall cause the work to be prosecuted in the mine in the following manner:

(1) Two (2) entries parallel with each other must be driven for the ingress and egress of the air, and crosscuts must be made at intervals not to exceed forty feet (40') apart;

(2) Where gas exists the crosscuts shall be driven thirty feet (30') apart or a crosscut shall be made at any other place ordered by the management;

(3) No room shall be turned inside the last course cut.

(b)(1) The State Mine Inspector shall give notice in writing to the owner, agent, lessee, or operator in charge of each coal mine worked on the room and pillar plan, to conform to the requirements set out in subsection (a) of this section.

(2) If the requirements are not complied with in the mines then the owner, agent, lessee, or operator so failing shall be deemed guilty of a misdemeanor and on conviction shall be fined not less than ten dollars ($10.00) nor more than fifty dollars ($50.00) for each day in which the mine is operated in violation of the above requirements.

11-7-308. Bore holes.

The owner, agent, or operator shall provide that a bore hole shall be kept twenty feet (20') in advance of the face of each and every working face and at a forty-five degree (45^{o}) angle at intervals of eight feet (8') on each rib of the working face when driving toward an abandoned mine or parts of a mine suspected of containing inflammable gases or of being inundated with water.

11-7-309. Means of signaling - Cages.

(a) The owner, agent, or operator of every mine operated by shaft shall provide suitable means for signaling between the bottom and top thereof.

(b) He shall also provide safe means of hoisting and lowering persons in a cage covered with boiler iron, so as to keep safe, as far as possible, persons descending into or ascending out of the mine.

(1) The cages shall be furnished with guides to conduct it through slides through the shaft with a sufficient brake on every drum to prevent accident in case of the giving out or breaking of the machinery.

(2) The cage shall be furnished with spring catches, intended and provided so far as possible to prevent the consequences of cable breaking or the loosening or disconnecting of the machinery.

(3) No props or rails shall be lowered in a cage in every case while men are descending into or ascending out of the mine.

(4) When men are ascending or descending, the opposite cage in every case shall be empty.

(5) No owner, agent, or operator of any coal mine operated by a shaft or slope shall place in charge of any engine whereby men are lowered into or hoisted out of the mines, anyone but an experienced, competent, and sober person not under eighteen (18) years of age.

(6) No person shall be permitted to ride upon a loaded cage or wagon used for hoisting purposes in any shaft or slope, except persons employed for that purpose.

(7) In no case shall any coal be hoisted out of any mine while any person or persons are descending into the mine.

(8) In no case shall more than one (1) member of the same family ascend or descend on a cage.

(9) No more than eight (8) persons shall ascend out of or descend into any mine on one (1) cage at one (1) time, nor shall they be lowered or hoisted more rapidly than five hundred feet (500') to the minute.

11-7-310. Gates, bonnets, and other safety measures.

(a) The owner, agent, or operator shall cause every landing on a level or above the surface of the ground and the entrance to each intermediate vein to be securely fenced by a gate and a bonnet so prepared to cover and protect the shaft and the entrances thereto.

(b) The entrance to every abandoned slope, air, or other shaft shall be securely fenced off.

(c) Every steam boiler shall be provided with proper steam gauge, water gauge, and safety valve.

(d) All underground self-acting or engine plains or gangways on which cars are drawn and persons allowed to travel shall be provided with some proper means of signaling between stopping places, and the end of the plains and gangways and sufficient places of refuge at the side of the plains and gangways shall be provided at intervals of not more than thirty feet (30') apart.

11-7-311. Prop timbers.

The owner, agent, or operator of any mine shall keep a sufficient amount of timber when required to be used as props, so that workmen can at all times be able to properly secure the workings from caving in. It shall be the duty of the owner, agent, or operator to send down all props when required and deliver the props to the place where cars are delivered. Timbering shall be done in a safe and workmanlike manner.

11-7-312. Medical and emergency supplies.

(a) There shall be kept in the engine room or at some nearby and convenient place at each mine a supply of oils, bandages, blankets or covers for wraps, and a cot or stretcher for the use of and to be used by persons who may receive injuries in or at the mines.

(b) The agent, owner, lessee, or operator shall also provide, and maintain at some convenient place, a conveyance in which to take from the mines to their place of abode persons who may be thus injured.

11-7-313. Washroom and lockers.

(a) It shall be the duty of every owner or lessee, its officers and agents, or other persons having jurisdiction or direction of any coal mine within the State of Arkansas, to provide a suitable building which shall be convenient to the principal entrance of the mine and equipped with individual lockers or hangers, benches or seats, proper light, heat, hot and cold water, and shower baths, and maintain them in good order, for

the use and benefit of all persons employed in or about the mine.

(b)(1) The building shall be constructed so as to give sufficient floor space for the accommodation of miners or others using it.

(2) The flooring in the washroom of the building is to be made of concrete or cement, but the material used in flooring the changing room shall be optional with the owner, lessee, or person operating or directing the operation of the mine.

(3)(A) All lockers required by this section, when made of steel, shall be not less than twelve inches (12") in width, twelve inches (12") in depth and sixty inches (60") in height.

(B) When the lockers are made of lumber, they shall not be less than twelve inches (12") in depth, twelve inches (12") in width and sixty inches (60") in height, with partitions in the center.

(4) Individual hangers shall consist of not less than three (3) suitable hooks upon which to hang clothing and a receptacle of suitable size for use in connection therewith, attached to a proper chain or wire rope, and suspended so as to admit of the hanger being raised to such height that the wearing apparel, when hung thereon, will not be less than seven feet (7') above the floor of the building and capable of being locked in that position.

(5) The lockers or hangers in each washhouse shall be sufficient in number to accommodate all employees of the mine or mines and there shall be one (1) shower bath for each fifteen (15) employees.

(c) The employees shall furnish their own towels, soap, and lock for their lockers or hangers and shall exercise control over and be responsible for the property by them left therein.

(d) It shall be the duty of all persons using the washhouses to remove therefrom all cast-off wearing apparel.

(e) Every corporation, company, partnership, or person, who shall construct any building required by subsections (a)-(d) of this section, and shall install the washhouse and washhouse facilities as required therein, shall at all times during the operation of any mine keep them in a clean and sanitary condition, but shall not be liable for the loss or destruction of any property of employees left in the building.

(f) It shall be the duty of the State Mine Inspector, and he is by this section authorized, to require washhouses already in existence to be so changed, remodeled, and improved as to comply with the provisions of this section. He shall have general supervision of this law and its enforcement.

(g)(1) Any owner or lessee, its officers, or agents, or other person or persons failing or refusing to comply with the provisions of this section shall be deemed guilty of a misdemeanor, and shall, upon conviction, be fined not less than fifty dollars ($50.00) nor more than one hundred dollars ($100).

(2) Each day's violation shall constitute a separate offense and shall be punished as such.

(h)(1) It shall be unlawful for any person to break, injure, or destroy any part or appurtenance to any washhouse or commit any nuisance therein.

(2) Any person adjudged guilty of a violation of this subsection shall be fined in any sum not less than twenty-five ($25.00) nor more than fifty dollars ($50.00).

11-7-314. Use of water on cutter bars and jackhammers required.

(a) In order to promote safety in coal mines by eliminating the hazards of coal and rock dust in coal mines, it is made the duty of every person, partnership, association, corporation, owner, operator, or lessee of any coal mine in this state to employ and use water on the cutter bars of all mining machines while cutting rock or coal in the mines and on all jackhammer drills while drilling in the mines in either coal or rock.

(b) Any person, partnership, association, corporation, owner, operator, or lessee of any coal mine in this state who shall violate the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in any sum not less than fifty dollars ($50.00) nor more than five hundred dollars ($500). Each separate instance of the violation of this section, either by the cutting machines or the jackhammers, shall be deemed a separate offense.

(c) It is also made unlawful for any person, miner, operator of a jackhammer drill, or machine runner to operate either a mining machine without water on the cutter bar or a

jackhammer drill contrary to the provisions of this section. Any person so doing shall be guilty of a misdemeanor and, upon conviction, shall be fined in any sum not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100). Each separate operation shall constitute a separate offense.

11-7-315. Daily inspection by fire boss.

(a) In all mines where a fire boss is employed, all working places and worked-out places adjacent to working places shall be examined, when it can be done, at least once a day by a competent fire boss. It shall be his or her duty to enter a report of existing conditions of the working places and worked-out places in a well-bound book to be kept by him for that purpose.

(b) All dangerous places that are marked out shall be marked on a blackboard, furnished by the company, before any other employee enters the mine.

11-7-316. High water danger.

(a) Whenever and wherever a coal mine in this state becomes dangerous from high water or overflow of streams adjacent thereto, whereby the lives of miners employed therein are jeopardized by reason of the high water, it shall be the duty of the managers of the coal mine to call the miners out of the mine and forbid their working therein until the danger is past.

(b)(1) Failure to act as required in subsection (a) of this section is made a misdemeanor.

(2) Upon conviction, the manager shall be fined in any sum not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000) or imprisoned not less than six (6) months nor more than one (1) year.

11-7-317. Reports of accidents.

(a) Whenever loss of life or serious personal injury shall occur by reason of any explosion or of any accident whatever in or about any mine, it shall be the duty of the person having charge of the mine to report the facts thereof without delay to the State Mine Inspector and, if any person is killed thereby, to notify the coroner or some justice of the peace of the county.

(b)(1) It shall be the duty of the mine inspector to investigate and ascertain the cause of the explosion, and file a report thereof with the other records of his or her office.

(2) To enable him to make the investigations, he or she shall have power to compel attendance of witnesses, take depositions, and administer oaths, and the cost of the examination shall be paid by the county as costs of coroners' inquests are now paid.

(c) Failure of the person in charge of the mine where the accident occurred to give the mine inspector notice thereof shall be a misdemeanor.

11-7-318. Age of miners.

No person under the age of eighteen (18) years shall be permitted to enter any mine to work therein.

11-7-319. Bond for semimonthly payment of wages.

(a)(1) Every person, firm, association, or corporation engaged in mining or producing coal or in the operation of a coal mine or coal mining business, and employing more than three (3) persons in connection therewith, shall give a qualified bond with good and sufficient surety to the State of Arkansas, for the use and benefit of the employees, conditioned to the effect that the employer will pay to the employees semimonthly the full amount that shall be due the employees on each semimonthly payday, as defined in this section.

(2) The bond shall be in the amount as scheduled in this subsection, based upon the number of employees of any coal mine for which the bond is made, as follows:

(A) Where the number of employees is not less than three (3) but less than twelve (12), the bond shall be two thousand five hundred dollars ($2,500);

(B) Where the number of employees is not less than twelve (12) but less than fifty (50), the bond shall be eight thousand dollars ($8,000);

(C) Where the number of employees is not less than fifty (50) but less than one hundred fifty (150), the amount of the bond shall be ten thousand dollars ($10,000);

(D) Where the number of employees is not less than one hundred fifty (150) but less than three hundred (300), the amount of the bond shall be fifteen thousand dollars ($15,000);

(E) Where the number of employees is three hundred (300) or more, the amount of the bond shall be twenty thousand dollars ($20,000).

(3) In the event any one (1) person, firm, association, or corporation shall operate more than one (1) coal mine, a separate bond shall be given for the benefit of the employees in each mine.

(4) The bond shall be filed with the clerk of the chancery court and shall be approved by the chancery court of the county where the labor, to secure the payment of which the bond is given, shall be performed.

(5)(A) In the event of variance in the number of employees, or when any bond shall not conform with the above schedule, any employee or interested person may, upon showing to the chancery court, have the court declare the number of employees of the employer in any mine, and thereupon, the court shall fix the amount of bond required by appropriate order.

(B) Any interested person may appeal the order in the manner now provided by law.

(6) The bond shall secure claims for labor only, including assignees of claims for labor and those who have advanced any money or thing of value to any employee on the order of this employer.

(b)(1)(A) Any employee or group of employees, who shall not be paid their wages when due, may proceed against the principal and sureties on the bond in an action in the chancery court of the county where the mine at which the labor was performed is situated, and for this purpose the mine shall be deemed to be situated at the place where its principal opening is situated.

(B) Any employees in the same mine may join in one (1) action, and process in the action shall run throughout the state.

(2) In an action brought to recover on the bond, the court shall assess a reasonable attorney's fee for the attorney for the

plaintiff if the plaintiff prevails therein, the fee to be adjudged as costs against the principal and sureties in the bond.

(3) No wages shall be deemed to be due for labor performed during the first half of any month until the first weekday of the following month and for labor performed during the last half of any month until the sixteenth day of the following month, and any action to recover on the bond must be commenced within thirty (30) days from the date of default in the payment of wages when due.

(c)(1) Any person, firm, association, or corporation who shall fail or refuse to comply with the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000) for each violation.

(2) When any person, firm, or corporation shall fail or refuse to comply herewith, the State Mine Inspector or any interested person may apply to the chancery court having jurisdiction pursuant to subdivision (a)(4) for an order enjoining and preventing the operation of any mine, by anyone, until this section is complied with, and upon proper showing, the order shall be made by the chancery court.

(3) The mine inspector, in his official capacity, shall not be required to give bond to obtain the order.

(4) Any regularly constituted labor union of mining laborers shall be deemed an interested person within the meaning of this section.

(d) This section shall not prevent the enforcement of any remedies now provided for laborers to enforce payment of their wages, but shall be cumulative thereto; provided, the remedy here provided must be exhausted before any other remedy may be invoked.

3. Employee Certification

[**NOTE:** 1989 Arkansas Acts 536 abolished the Coal Mine Examining Board and transferred its powers, duties, and functions to the Director of the Department of Labor.]

11-7-401. Coal Mine Examining Board - Members, organization, and proceedings.

(a)(1) There shall be appointed by the Governor a board of four (4) examiners appointed for a term of four (4) years.

(A) Two (2) of the board members shall be practical miners who have had at least eight (8) years' experience as miners in mines of Arkansas or elsewhere;

(B) Two (2) of the members shall be operators of coal mines in the State of Arkansas or representatives thereof.

(2) One (1) additional member of the board shall be selected by the four (4) appointed members.

(b) The members of the examining board may receive expense reimbursement in accordance with §25-16-901 et seq.

(c) Immediately after their appointment, the examiners shall meet and organize by selecting a chairman and secretary. The secretary shall keep on file all examination questions and their answers and all examination records and papers belonging to the board.

(d) The examining board shall convene upon call of the chairman and, except in case of emergency, notices shall be published in one (1) newspaper of general circulation in each county in which there are coal mines, at least five (5) days before the day of meeting.

11-7-402. Coal Mine Examining Board - Power to administer oaths.

(a) In order to more effectively carry out the intentions and purposes of this section and §§11-7-409 - 11-7-414, members of the Coal Mine Examining Board shall have the power to administer oaths to any and all persons who are applicants, or who may vouch, in any manner for the previous service or qualifications of any applicant in order to obtain for him a certificate pursuant to this section and §§11-7-409 - 11-7-414.

(b) Any person who shall falsely testify or swear to any matter material to such examination or to the service or qualification of any applicant shall be deemed guilty of perjury and upon conviction shall be subject to the penalties prescribed by the laws of the State of Arkansas against those who commit perjury.

11-7-403. Fire bosses, mine foremen, etc. - Examination - Qualifications.

(a) No fire bosses, hoisting engineers, or mine foremen shall be employed in any mine in the State of Arkansas unless they have been examined by the Arkansas Department of Labor or the department determines that comparable testing criteria have been met in another jurisdiction.

(b) No one shall act as mine inspector or assistant mine inspector of the State of Arkansas unless they have been examined by the board of examiners, as provided in this section.

(c) Applicants for examination shall be able to read and write the English language and shall satisfy the board of examiners that they are of good moral character and are not users of intoxicating liquors and are citizens of the United States.

(d) All applicants shall be thoroughly examined with reference to the duties of the positions for which they have applied for a certificate.

(e)(1) Applicants for certificates as mine foremen shall be at least twenty-five (25) years old and shall have had at least five (5) years' experience as practical coal miners, mining engineers, or men of general underground experience.

(2) Applicants for certificates as fire bosses shall have like qualifications and experience in the mines of Arkansas or elsewhere and shall also have had experience in mines that generate explosive and noxious gases.

(f)(1) Applicants for certificates as mine inspector shall, before examination, pay to the board a fee of four dollars ($4.00) and, if successful, a further fee of six dollars ($6.00) for a certificate.

(2) Applicants for certificates as assistant mine inspector shall, before examination, pay to the board a fee of three dollars ($3.00) and, if successful, a further fee of four dollars and fifty cents ($4.50) for a certificate.

(3) Applicants for certificates as mine foremen and hoisting engineers shall, before examination, pay to the board a fee of two dollars ($2.00) and, if successful, a further fee of three dollars ($3.00) for a certificate.

(4) Other applicants shall, before examination, pay to the board of examiners a fee of one dollar ($1.00) and, if successful, a further fee of two dollars ($2.00) for a certificate.

11-7-404. Fire bosses, mine foremen, etc. - Certificate - Grades.

(a)(1) The Director of the Department of Labor shall grant certificates after examination by the Arkansas Department of Labor or a determination by the department that the testing requirements have been satisfied in another jurisdiction.

(2) The certificates shall be granted to all applicants who through these testing procedures have shown themselves familiar with the duties of the position for which they desire certificates and are capable of performing such duties.

(3) Certificates of the first grade shall be granted only to applicants who, by oral or written examinations in the presence of and relating to explosive gas, have shown themselves competent to act as mine foremen in mines which generate explosive and noxious gases, and the certificate shall so state.

(4) Certificates for mine inspector and assistant mine inspector shall be granted only to applicants who have shown themselves duly qualified, as provided by the law creating the office, and no appointments shall be made to these offices unless the appointee shall hold a certificate.

(b)(1) Anyone holding a first grade foreman's certificate may serve as a foreman in any mine and may serve as fire boss.

(2) Anyone holding a second grade mine foreman's certificate may serve as any of the above, except as fire boss and foreman in mines which generate explosives or noxious gases.

(3) In case of emergency, any mine owner, with consent of the Coal Mine Examining Board, may employ any trustworthy or experienced man who shall not possess a certificate, for a period of not more than thirty (30) days as mine foreman or fire boss. In the event that the holder of a permit fails to qualify after thirty (30) days, his permit shall be revoked.

11-7-405. Fire bosses, mine foremen, etc. - Duplicate certificate.

In case of loss or destruction of certificate, the secretary of the examining board, upon satisfactory proof of the loss or destruction, may issue a duplicate on the payment of the sum of one dollar ($1.00).

11-7-406. Fire bosses, mine foremen, etc. - Revocation of certificate.

(a) All certificates issued pursuant to this subchapter may be revoked by the board of examiners after a hearing upon due notice to the holder of the certificate and upon written charges preferred by the board or by some interested person for violation of §§11-7-401 and 11-7-403 - 11-7-407.

(b)(1) A complaint may be filed against the holder of a certificate for intoxication, mental disabilities, neglect of duty, or other sufficient cause.

(2) The holder of the certificate so canceled shall have the right to appear before the examining board after the expiration of three (3) months and be reexamined if he shall first satisfy the board that the incapacity complained of shall have ceased to exist.

11-7-407. Fire bosses, mine foremen, etc. - Misrepresentation of certificate.

Any person who shall forge, alter, or counterfeit a certificate, shall secure or attempt to secure employment by use of the forged, altered, or counterfeited certificate, or shall falsely represent that he is a holder of a certificate regularly issued him shall be guilty of a misdemeanor.

11-7-408. Penalty for violation of §§11-7-401, 11-7-403 - 11-7-407.

(1) Any owner, operator, lessee, or agent of any coal mine in the State of Arkansas violating any of the provisions of §§ 11-7-401 and 11-7-403 - 11-7-407 shall be deemed guilty of a misdemeanor.

(2) Upon conviction he shall be fined not less than ten dollars ($10.00) nor more than one hundred dollars ($100) or

be imprisoned in the county jail not exceeding one (1) year, or both.

11-7-409. Coal miners - Definition.

(a) The term "coal miner" as used in §§11-7-402, 11-7-410 - 11-7-414, unless the context otherwise requires, shall be construed to mean any person working underground, or in development in shafts, slopes, drifts, or tunnels for the extraction or production of coal or rock.

(b) The term "coal miner" in strip pit operation is defined as only those employees engaged in the extraction of coal from the pit.

11-7-410. Coal miners - Certificate required.

(a) It shall be unlawful for any person to work as a coal miner in any coal mine in this state without first having a certificate of qualification and competency to do so from the Coal Mine Examining Board of this state, nor shall any person, firm, or corporation employ as a coal miner in his coal mine in the State of Arkansas any person who does not hold a certificate, nor shall any mine foreman, overseer, or superintendent permit or suffer any person to be employed under him, or in any coal mine under his charge or supervision, as a coal miner in this state, except as provided in this act, who does not hold a certificate of qualification.

(b) Any person, firm, or corporation who violates any of the provisions of this section or §11-7-411 shall be deemed guilty of a misdemeanor and on conviction shall be fined in the sum of not less than fifty dollars ($50.00) nor more than one hundred dollars ($100) or by imprisonment for a term of not less than ten (10) days nor more than thirty (30) days, or by both such fine and imprisonment, at the discretion of the court or jury trying the case.

11-7-411. Coal miners - Examination - Qualifications - Certificates.

(a) The Coal Mine Examining Board of this state shall hold sufficient examinations each year in places to be determined by the board which, in its opinion, will be most convenient to applicants desiring to engage in the business of coal mining.

(b) All examinations held by the Coal Mine Examining Board shall be conducted in the English language and shall be of a practical nature, so as to determine the competency and qualifications of each applicant.

(c) The board shall examine under oath all persons who may apply for certificates, except those regularly employed in the State of Arkansas and exempted under the provisions of § 11-7-409, as to their previous experience as coal miners and shall grant certificates of competency and qualification to such applicants as it may find to be qualified. The certificate, when so issued, shall entitle the holder thereof to be employed as, and to do the work of, a coal miner in this state.

(d)(1) No certificate of competency and qualification shall be issued or delivered to any person under this act, unless:

A) He first shall produce evidence of having had not less than two (2) years of practical experience working as a coal miner or working with a coal miner, and

B) He is competent to mine coal in the coal mines of this state.

(2) In no case shall the applicant be deemed competent or qualified under this act unless he appears in person before the examining board and orally answers intelligently and correctly at least twelve (12) practical questions propounded to him by the board pertaining to requirements and qualifications of a practical coal miner.

(e) The board shall keep an accurate record of its proceedings and meetings and in the record shall show a correct detailed account of the examination of each applicant with the questions asked and their answers, and at each of its meetings, the board shall keep the records open for the inspection of the parties in interest.

(f) No miner's certificate granted under the provisions of this act shall be transferable, and any effort to transfer the certificate shall be deemed a violation of this act.

(g) The certificate shall be issued only at meetings of the board, and the certificate shall not be legal unless signed by at least a majority of the members of the board.

(h)(1) Each applicant for the certificate provided for herein shall pay a fee of fifty cents (50¢) to the board, at the time of

making application, and, if successful in the examination, shall pay an additional fee of fifty cents (50¢) for the certificate.

(2) All fees collected from these applicants shall be paid into the Coal Mine Examining Fund and paid out of the fund as other moneys are paid out.

11-7-412. Coal miners - Temporary permit - Grandfather clause.

(a) A person making application for a coal miners' certificate of competency and qualification shall be granted a temporary permit to work until such time as an examination is held by the board if, in the judgment of the board, he is so qualified.

(b) Any person regularly employed before June 9, 1949, in any coal mine in the State of Arkansas, shall be entitled to receive a certificate of competency under this act without further notice or examination, and to pay a fee of fifty cents (50¢) for the certificate.

(c) All fees collected from the applicants shall be paid into the Coal Mine Examining Fund and paid out of the fund as other moneys are paid out.

11-7-413. Coal miners - Apprentices.

(a) Any certified miner may have one (1) person working with him and under his direction, in addition to any member of his immediate family, as an apprentice for the purpose of learning the business of coal mining and becoming qualified to obtain a certificate in conformity with the provisions of this act.

(b) Any apprentice shall first be regularly employed by the owner of the coal mine in the same manner as the other employees.

11-7-414. Coal miners - Duplicate certificate - Revocation of certificate.

The Coal Mine Examining board shall possess powers to issue duplicate certificates and to revoke certificates in all cases as provided in §§11-7-405 and 11-7-406.

4. Weighing of Coal

15-59-111. Weighman and checkweighman – Employer's account book.

(a) Before entering upon his duties, the weighman employed at any mine shall take and subscribe an oath, or affirmation, before some proper officer, to do justice between employer and employee, and to weigh the output from the mine honestly and correctly.

(b) The miners engaged in working any mine shall have the privilege, if they so desire, of selecting, by a majority vote, and employing at their own expense, a checkweighman, who shall in like manner take an oath, who shall have like rights, powers, and privileges in attending and seeing that coal is correctly weighed and who shall be subject to the same penalties as the regular weighman. Each weighman shall keep account of all coal weighed at the mines in a well-bound book kept for that purpose. The oath or affirmation shall be kept posted in a conspicuous place in the weight office.

(c) Every owner, agent, or operator of any coal mine in this state shall keep a correct account of the output of coal at his mine in a well-bound book kept for that purpose, therein showing the amount of coal mined in each day, in each month and in each year. The account shall be kept in the general office in this state of the owner, agent, or operator, subject at all times to the inspection of the State Mine Inspector, and, if the mine is leased, subject also to the inspection of the owner of the mine, his agent, or attorney.

15-59-112. Scales and measures.

(a) It shall be the duty of every corporation, company, or person engaged in the business of mining and selling coal by weight to procure and constantly keep on hand at the proper place the necessary scales and whatever else may be necessary to correctly weigh the coal mined by the corporation, company, or person.

(b) It shall be the duty of the State Mine Inspector to visit each coal mine operated therein. Where the scales are kept, at least once in each year, he shall test the correctness of the scales.

(c) The owner or operator of each coal mine, or any two (2) or more of the miners working therein, may, in writing, require his attendance at the place where scales are kept at other times in order to test the correctness thereof. It shall be his duty to comply with the request as soon as he can after receiving the request.

(d) Any corporation or person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall, for each offense, be fined not less than twenty-five dollars ($25.00) and not more than five hundred dollars ($500); and the officers, agents, or employees of the corporation or company whose duty it was to do or perform the act, or to cause it to be done and performed, which is the subject of the indictment, may be indicted jointly with the corporation or company and upon conviction be fined in any sum not less than twenty-five dollars ($25.00) nor more than five hundred dollars ($500).

15-59-113. Testing weights.

Every agent, owner, lessee, or operator engaged in mining coal in any quantity shall furnish and keep on hand for the use of the State Mine Inspector for inspecting, testing, and examining scales, five hundred pounds (500 lbs.) of the United States standard testing weights.

15-59-114. Screening coal.

(a) It shall be unlawful for any mine owner, lessee, or operator of coal mines in this state, employing miners at bushel or ton rates, or other quantity, to pass the output of coal mined by the miners over any screen or any other device which shall take any part from the value thereof before the coal shall have been weighed and duly credited to the employee sending the coal to the surface,. It shall be accounted for at the legal rate of weights as fixed by the laws of Arkansas. No employee within the meaning of this section shall be deemed to have waived any right accruing to him under this section by any contract he may make contrary to the provisions thereof. Any provision, contract, or agreement between the mine owners, lessees, or operators thereof and the miners employed therein, whereby the provisions of this section are waived, modified, or annulled,

shall be void and of no effect, and the coal sent to the surface shall be accepted or rejected. If accepted, the coal shall be weighed in accordance with the provisions of this section, and right of action shall not be invalidated by reason of any contract or agreement.

(1) Provided, that in Cane Creek River, and Logan Townships in Logan County, and all of Johnson County, except Grant Township, all coal mined and paid for by weight may be paid for on the mine run basis or upon the screen coal basis, which shall be a matter of agreement between the operators and the miners.

(2) Provided, further, that if any coal shall be mined on the screen coal basis, it shall pass over the following kind of screen:

(A) The screen shall not be more than four feet (4') wide and not more than twelve feet (12') long, made of steel or iron bars, which shall not be less than five-eighths inch (5/8") in thickness on the face and not less than five-sixteenths inch (5/16") in thickness on the bottom and not less than one and one quarter inch (1 1/4") in width and shall be in no case more than one and one quarter inch (1 1/4") apart.

(B) The screen shall be supported by rests or cross bars.

(C) The rests or cross bars shall in no event be placed more than three feet (3') apart.

(D) The screen bars shall be placed upon rests in such a manner as to prevent spreading and the rests or cross bars shall be firmly fastened to each side of the chute through which the coal passes.

(E) Rests or cross bars shall be so arranged as in no case to rise above the top of the screen bars in such a manner as to retard the speed of the coal in passing over the screen.

(F) Where coal is screened before it is weighed it shall be dumped upon flat sheets and passed over the screen as described above and there shall be no obstruction on the screens.

(b) Any owner, agent, lessee, or operator of any coal mine in this state where ten (10) or more men are employed underground, who shall knowingly violate any of the provisions of this section, shall be deemed guilty of a

misdemeanor and upon conviction shall be punished by a fine or not less than two hundred dollars ($200) nor more than five hundred dollars ($500) for each offense or by imprisonment in the county jail for a period of not less than sixty (60) days not more than six (6) months, or both such fine and imprisonment. Each day any mine or mines are operated thereafter shall be a separate and distinct offense. Proceedings are to be instituted in any court having competent jurisdiction.

15-19-115. Annual report of coal mined.

(a) Every owner, agent, lessee, or operator operating a coal mine in this state, shall annually, on July 1 of each year, make a report, under oath, upon blank forms to be furnished by the State Mine Inspector, of the true amount of coal mined each month for the twelve (12) months next preceding the making of the report. The blank forms shall be prepared by the Arkansas State Police and contain the necessary heading and columns to obtain a correct and true statement of all coal of every kind mined.

(b) This section shall apply to all mines without regard to the number of men employed.

(c) Any owner, agent, lessee, or operator who fails or refuses to file, swear to, and return the reports by July 1 of each year shall be deemed guilty of a misdemeanor. On conviction, he shall be fined not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100) for each day of failure. Any agent, owner, lessee, or operator who knowingly swears to a false report shall be deemed guilty of perjury and punished accordingly.

J. RAILWAY AND COMMON CARRIERS

1. Railway Equipment

23-12-401. Requirements of construction of engines.

(a)(1) It shall be unlawful for any person, company, or corporation, or receiver of any railroad, to use or operate any locomotive engines in the State of Arkansas that are not constructed so that the engineer and fireman will be located

under the same roof of the engine cab at all times while engaged in firing, running, and operating the engine.

(2) The roof is not to be more than fourteen feet (14') in length and is to extend entirely over the deck or gangway of the engine.

(b) It is intended that subsection (a) shall apply to engines of the "Wooten Firebox Type," or "Mother Hubbard," or "Double Cab," or "Camel Back" engines only.

(c) Any person, company, or corporation, or receiver of any railroad violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than fifty dollars ($50.00) and not more than five hundred dollars ($500) for each offense, and each day shall constitute a separate offense.

23-12-402. Locomotives to have headlights of requisite candlepower.

(a) Any company, corporation, or officer of court, owning or operating a railroad over fifty (50) miles in length, which is in whole or in part within this state, shall be required to equip, maintain, and use on each and every locomotive being operated in road service in this state in the nighttime a headlight of power and brilliancy of one thousand five hundred (1,500) candlepower.

(b) Any company, corporation, or officer of court owning or operating a railroad over fifty (50) miles in length, which is in whole or in part within this state, violating the provisions of this section, shall be liable on conviction to a penalty of a fine of not less than three hundred dollars ($300) nor more than five hundred dollars ($500) for each separate offense, which amount shall be recovered in a civil action in the name of the state.

(c) It is made the duty of any prosecuting attorney of any district in this state to enforce the provisions of this section when a complaint is properly filed in his office.

23-12-403. Requirements of construction of caboose cars.

(a) The provisions of this section shall apply to any corporation or to any persons while engaged as common carriers in the transportation by railroad of passengers or

property within this state to which the regulative power of this state extends.

(b)(1) It shall be unlawful, except as otherwise provided in this section, for any such common carrier by railroad to use on its lines any caboose or other car used for similar purposes unless the caboose or other car is at least twenty-four feet (24') in length inclusive of the platform and equipped with two (2) four-wheel trucks.

(2) The caboose car or other car used for similar purposes:

(A) Shall be of constructive length equal to that of the thirty-ton capacity freight cars constructed according to M.C.B. standards; and

(B) Shall be provided with a door in each end and with an outside platform across each end of the car, and each platform shall nor be less than twenty-four inches (24") in width; and

(C) Shall be equipped with proper guard rails and with grab irons and steps for the safety of persons getting on and off the cars. The steps shall be equipped with a suitable rod, board, or other guards at each end and at the back thereof properly designed to prevent slipping from the step.

(3) The caboose shall not be less than seven feet (7') in height, with cupola, and have the necessary closets and windows.

(c) Whenever any caboose car or other cars now in use by a common carrier as provided in subsection (a) of this section shall be brought into any shop for general repairs, it shall be unlawful to again put the caboose or other car into service of the common carrier within this state unless it is equipped as provided in subsection (b) of this section.

(d) Any common carrier as provided in subsection (a) of this section violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars ($50.00) nor more than one hundred dollars ($100) for each offense.

23-12-404. Equipment required on track motor cars.

(a) No railroad company in this state shall use any track motor car for the transportation of its employees unless the

motor car is equipped with a windbreaker, a red taillight, and an electric headlight of sufficient brilliancy to distinguish an object the size of a man at a distance of three hundred feet (300').

(b) Any company, corporation, or officer of court, owning or operating a railroad of fifty (50) miles in length in whole or in part within this state violating the provisions of this section shall be liable on conviction to a penalty of a fine of not more than five dollars ($5.00) for each separate offense which shall be recovered in a civil action in the name of the state.

23-12-405. First aid kits and drinking water required.

(a) Every person operating a common carrier railroad in this state shall equip each locomotive and caboose used in train or yard switching service and every passenger car used in passenger service with a first aid kit of a type to be approved by the Arkansas Transportation Commission. However, the first aid kits shall not be required on equipment used exclusively in yard or switching service where first aid kits are maintained in the yard or terminal.

(b) Each locomotive and caboose shall be furnished with sanitary drinking cups and pure ice-cooled drinking water dispensed from a suitable sanitary container.

(c) Any person guilty of violating any of the provisions of this section shall be guilty of a misdemeanor and shall be fined, in the name of the State of Arkansas, not less than twenty-five dollars ($25.00) for each offense, and each day shall constitute a separate offense by the railroad employer thereof.

(d) For the purpose of this section, "locomotive" shall include all engines propelled by any form of energy and used in railroad service such as transfer or rail line haul or yard switching service.

23-12-406. Transportation of hazardous materials.

Any railroad transporting hazardous materials, as defined in the federal Hazardous Materials Transportation Act, in this state must have on the train, in the possession of the train crew, documents which shall contain the following information regarding the hazardous material:

(1) Position in the train of the car containing the hazardous material;

(2) Number of the car containing the hazardous material:

(3) Description of the hazardous nature of the material, such as whether it is a corrosive or flammable liquid, gas, or solid; and

(4) A description of the quantity of the hazardous material.

2. Railway Employees

23-12-509. Limit on hours of service of trainmen on freight trains -- Penalties for noncompliance -- Liability for death or injury.

(a)(1) Any company owning or operating a railroad over thirty (30) miles in length in whole or in part within this state shall not permit or require any conductor, engineer, fireman, brakeman, or any trainman on any train, who has worked his respective capacity for sixteen (16) consecutive hours, to again be required to go on duty or perform any work until he has had at least eight (8) hours rest, except in cases of wrecks or washout.

(2) However, at the expiration of the sixteen (16) hours continuous service, the engineer and trainmen on any train which is at a distance not exceeding twenty-five (25) miles from any division terminal or destination point shall be permitted, if they so elect, to run the train into the division terminal or destination point. The additional service permitted under this subdivision shall not be so construed as to relieve any railroad corporation from liabilities incurred under subsection (c) of this section.

(b) Any railroad company or corporation knowingly violating any of the provisions of this section shall be liable to a penalty of not less than one hundred dollars ($100) nor more than two hundred dollars ($200) for the first offense; for any subsequent offense, it shall be liable for a penalty of not less than two hundred dollars ($200) nor more than three hundred

dollars ($300), which shall be recovered in a civil action in the name of the state.

(c) In addition to the penalty prescribed in subsection (b) of this section, any corporation violating the provisions of this section shall not be permitted to interpose the defense of contributory negligence in the event of action being brought to recover for damages resulting from any accident which shall occur and by which injury shall be inflicted on any employee who may be detained in service more than sixteen (16) hours, notwithstanding that the negligence of the injured employee may have caused his own injury. Nor shall the defense of contributory negligence be interposed if the injury resulted in the death of the employee and the action is brought for the benefit of his next of kin.

(d) The provisions of this section shall not apply to passenger trains.

23-12-510. Limit of hours on duty of telephone and telegraph operators for railroads - Penalties.

(a) It shall be unlawful for any person, corporation, association, or their agents or officials operating a railroad within this state to permit any of the following to be on duty for more than eight (8) hours in any twenty-four (24) consecutive hours: any telegraph or telephone operator who is engaged in the handling of trains by the use of the telegraph or telephone, reporting trains to each other and to the train dispatcher registering the trains, and operating one (1) or more train order signals; telegraph or telephone levermen who manipulate lever machines in railroad yards, or on the main tracks out of the line, connecting sidetracks or switches; or train dispatchers in its service whose duties pertain to the movement of cars, engines, or trains on its railroad by the use of the telegraph or telephone in dispatching or reporting trains, or receiving or transmitting train orders or messages directing the movement of trains as interpreted in this section.

(b)(1) Any person, corporation, association, or their agents or officials that shall violate subsection (a) of this section shall pay a fine of five hundred dollars ($500) for each violation of this section.

(2) The fine mentioned in subsection (b) of this section shall be recovered by an action in the name of the State of Arkansas for the use of the state, who shall sue for it against the person, corporation, association, agent, or official violating this section. The suit is to be instituted in any court in this state having appropriate jurisdiction.

(3) The fine, when recovered, shall be paid without any deduction whatever to the State of Arkansas, for whose use the suit was instituted.

23-12-511. Drinking water furnished "maintenance of way" employees - Enforcement - Penalties.

(a) Every railroad operating in this state shall provide its "maintenance of way" employees with sanitary drinking water to be dispensed through sanitary drinking facilities.

(b) It is made the duty of the Director of the Department of Health of this state to enforce the provisions of this section when a complaint is properly filed with the State Board of Health, and it shall be the duty of the prosecuting attorney of any district in this state, upon the request of the Director of the Department of Health, to enforce the provisions of this section.

(c) Failure to comply with this section shall constitute a misdemeanor, and any employer upon conviction for violation of this section shall be liable to a fine of not less than twenty-five ($25.00) nor more than one hundred dollars ($100).

23-12-512. Blocks in frogs and guardrails required.

(a) Any company owning or operating any railroads in this state shall be required to place and maintain blocks of a sufficient size in all its frogs and guardrails to prevent employees from getting their feet caught therein.

(b) Any company owning and operating any railroad in this state, violating the provisions of this section, shall be liable on conviction to a penalty of a fine of not less than twenty-five ($25.00) for each separate offense.

23-12-513. Shelter required where railroad equipment constructed or repaired.

(a)(1) It shall be unlawful for any railroad company or corporation, or other persons who own, control, or operate any

lines of railroad in the State of Arkansas, to build, construct, or repair railroad equipment without first erecting and maintaining a building or shed over the repair tracks at every division point.

(2) The building or shed is to be provided with a floor where the construction or repair work is permanently done, so as to provide that all men permanently employed in the construction and repair of cars, trucks, and other railroad equipment shall be under shelter during snows, sleet, rain, and other inclement weather.

(b)(1) Every corporation, person, manager, superintendent, or foreman of any company, corporation, or person who fails or refuses to comply with the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100).

(2) Each day that the railroad company, corporation, person, manager, foreman, or agent of any railroad company, corporation, or person refuses or fails to comply with the provisions of this section shall constitute a separate and distinct violation thereof.

3. Motor Carriers

23-13-101. Hours of duty and rest period of drivers - Penalties - Exceptions.

(a) It shall be unlawful for any companies, firms or corporations, or officers of courts or individuals owning, operating, leasing, or subleasing any lines using vehicles propelled by any form or energy on the highways of Arkansas for the purpose of transporting passengers, freight, mail, express, or any commodity to keep their drivers on duty for more than fifteen (15) consecutive hours. At the expiration of fifteen (15) hours of duty, the driver must have at least eight (8) hours of rest.

(b) Any companies, firms, corporations, lessees or sublessees, or individuals violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars ($50.00) nor more than

five hundred dollars ($500). Each vehicle illegally operated as provided in this section shall constitute a separate offense.

(c) This section shall not apply in case of wrecks or washouts.

K. PUBLIC EMPLOYEES' CHEMICAL RIGHT TO KNOW ACT

8-7-1001. Title.

The provisions of this subchapter shall be known and may be cited as the "Public Employees' Chemical Right To Know Act".

8-7-1002. Legislative findings and purpose.

(a) The General Assembly finds that the proliferation and variety of hazardous chemicals present in government employment may affect the health, safety, and welfare of public employees of the State of Arkansas.

(b) The General Assembly also finds that most private employers, in compliance with United States Occupational Safety and Health Administration regulations, provide their employees with training, information, and other protections concerning chemical hazards, but that public employees of the State of Arkansas and its political subdivisions are not subject to United States Occupational Safety and Health Administration regulations and do not receive the benefits of these protections.

(c) It is the purpose of this subchapter to provide public employees access to training and information concerning hazardous chemicals to enable them to minimize their exposure to such chemicals and protect their health, safety, and welfare.

8-7-1003. Definitions.

In this subchapter:

(a)(1) "Chemical manufacturer" means an employer with a workplace where chemicals are produced for use or distribution;

(2) "Director" means the Director of the Department of Labor or his designee;

(3) "Distributor" means a business, other than a chemical manufacturer or importer, which supplies hazardous chemicals to other distributors or to employers;

(4) "Exposure" or "exposed" means that an employee is subjected to a hazardous chemical in the course of employment through any route of entry (inhalation, ingestion, skin contact, or absorption, etc.), and includes potential, e.g. accidental or possible, exposure;

(5) "Hazard Communication Standard" means the Hazard Communication Standard adopted by the United States Occupational Safety and Health Administration and codified in the Code of Federal Regulations at 29 C.F.R. 1910.1200, as of July 1, 1991;

(6) "Hazardous chemical" means any element, chemical compound, or mixture of elements or compounds, which is a physical hazard or a health hazard as defined by the Hazard Communication Standard;

(7) "Label" or "labeling" means any written, printed, or graphic material, displayed on or affixed to containers of hazardous chemicals;

(8) "Material safety data sheet" means written or printed material concerning a hazardous chemical which is prepared in accordance with the Hazard Communication Standard;

(9) "Public employee" means any employee of a public employer, who may be exposed to hazardous chemicals in the workplace under normal operating conditions or foreseeable emergencies. Office workers and nonresident management are not generally included unless their job performance routinely involves potential exposure to hazardous chemicals;

(10) "Public employer" means the State of Arkansas and each political subdivision thereof, as defined in §21-5-603(b);

(11) "Trade secret" is defined in accordance with §4-75-601(4);

(12) "Work area" means a room or defined space in a workplace where hazardous chemicals are produced or used, and where employees are present;

(13) "Workplace" means an establishment, job site, or project, at one (1) geographical location containing one (1) or more areas under a public employer's control or direction;

(14) "Workplace chemical list" means a list of hazardous chemicals in a workplace developed pursuant to §8-7-1007.

(15) All other definitions of the Hazard Communication Standard as they exist on the date of enactment of this subchapter are hereby adopted and incorporated by reference.

8-7-1004. Duties of public employers.

Each public employer shall do the following:

(1) Post adequate notice, as provided by the director, at locations where notices are normally posted, informing employees about their rights under this subchapter;

(2) Ensure proper chemical labeling in accordance with § 8-7-1005;

(3) Maintain and make available material safety data sheets in accordance with §8-7-1006;

(4) Compile and maintain a workplace chemical list in accordance with §8-7-1007;

(5) Provide employee information and training in accordance with §8-7-1008; and

(6) Handle trade secrets in accordance with §8-7-1012.

8-7-1005. Labeling.

(a) Existing labels on containers of hazardous chemicals shall not be removed or defaced.

(b) If a public employer transfers a hazardous chemical from the original container to another container, the employer shall reproduce or otherwise place on the container to which the hazardous chemical was transferred the identity of the hazardous chemical and appropriate hazard warnings. However, if such hazardous chemical is regulated under the Federal Insecticide, Fungicide, and Rodenticide Act, or the Arkansas Pesticide Control Act, §2-16-401 et seq., then such employer shall reproduce on the container to which such hazardous chemical was transferred the chemical name or common name on the original container.

(c) A public employer is not required to label portable containers into which hazardous chemicals are transferred from labeled containers, and which are intended only for the immediate use of the employee who performs the transfer.

Public employees shall not be required to work with a hazardous chemical from an unlabeled container except for a portable container intended for immediate use by the employee who placed the hazardous chemical into the portable container. For the purposes of this subsection, the term "unlabeled container" means a container which is not labeled in accordance with this section or the Hazard Communication Standard.

8-7-1006. Material safety data sheets.

(a) Chemical manufacturers and distributors shall provide public employers which purchase a hazardous chemical from them with an appropriate material safety data sheet prior to or with their initial shipment of the hazardous chemical and with the first shipment after the material safety data sheet for the hazardous chemical is updated.

(b) Public employers shall maintain the most current material safety data sheet received from chemical manufacturers or distributors for each hazardous chemical in the workplace. If a material safety data sheet has not been provided by the chemical manufacturer or distributor at the time the chemicals are received at the workplace, the public employer shall request one in writing from the chemical manufacturer or distributor within five (5) business days.

(c) Material safety data sheets shall be readily available, upon request, to employees and their designated representatives.

(d)(1) If a material safety data sheet for a hazardous chemical is not readily available upon request, an employee or his designated representative may submit a written request for the material safety data sheet to the public employer. The employer, within three (3) business days, either shall furnish a copy of the requested material safety data sheet to the requester or, if the requested material safety data sheet is not in the employer's possession, shall demonstrate to the requester that the employer has made an effort to obtain the material safety data sheet from the distributor, manufacturer, or other source.

(2) If after two (2) weeks from receipt of the request the public employer has not furnished the requester with the requested material safety data sheet, the employer shall not

require the employee to work with the hazardous chemical for which the material safety data sheet was requested until the material safety data sheet is furnished, unless:

(A) The manufacturer of the substance for which the material safety data sheet was requested furnishes a written statement that the substance is not a hazardous chemical as defined in §8-7-1003;

(B) The employer can demonstrate to the employee that the material safety data sheet cannot be obtained through no fault of the employer; or

(C) The employer can demonstrate to the employee that the material safety data sheet will be furnished by a date specified by the employer within one (1) additional week, provided that the employee shall not be required to work with the hazardous chemical if the material safety data sheet is not furnished by the date specified.

(3) If an employee declines to work with a hazardous chemical as authorized by this subsection, he shall not be penalized. Reassignment of an employee to other work, at equal pay and benefits, shall not be considered a penalty under this subsection.

(e) A public employer, chemical manufacturer, or distributor shall provide a copy of a material safety data sheet to the director upon request.

(f) A public employer, chemical manufacturer, or distributor may meet the requirements of this section with respect to a hazardous chemical which is a mixture either by providing a material safety data sheet for each element or compound in the mixture which is a hazardous chemical, or by providing a material safety data sheet for the mixture itself. If more than one (1) mixture has the same element or compound, only one (1) material safety data sheet for that element or compound is necessary.

8-7-1007. Workplace chemical lists.

(a) Each public employer shall compile and maintain a workplace chemical list which shall contain the following information for each hazardous chemical normally used, generated, or stored in the workplace in an amount equal to, or

greater than fifty-five gallons (55 gals.) or five hundred pounds (500 lbs.):

(1) The chemical name or common name used on the material safety data sheet or the container label;

(2) The Chemical Abstracts Service number for such hazardous chemical if such number is included on the material safety data sheet; and

(3) The work area or workplace in which the hazardous chemical is normally used, generated, or stored.

(b) Each public employer shall file the workplace chemical list with the director no later than ninety (90) days after July 1, 1991, and shall update the list as necessary, but in any case by July 1 of each subsequent year.

(c) A public employer may meet the requirements of this section with respect to a hazardous chemical which is a mixture either by identifying on the workplace chemical list each element or compound in the mixture which is a hazardous chemical, or by identifying on the list the mixture itself. If more than one (1) mixture has the same element or compound, only one (1) listing of the element or compound is necessary.

8-7-1008. Employee information and training.

(a) Each public employer shall provide an information and training program for its employees as defined in §8-7-1003(9). Additional instruction shall be provided whenever a new hazard is introduced into their work area or whenever new and significant information is received by the employer concerning the hazards of a chemical. New or newly assigned employees shall be provided training before working in a work area containing hazardous chemicals.

(b) The information and training program provided pursuant to this section shall be developed in accordance with regulations to be promulgated by the director pursuant to §8-7-1011 within six (6) months after July 1, 1991. The regulations shall include, at a minimum, requirements concerning:

(1) Information on interpreting labels and material safety data sheets and the relationship between these two (2) methods of hazard communication;

(2) The location and availability of the workplace chemical list and material safety data sheets;

(3) Any operations in an employee's work area where hazardous chemicals are present;

(4) The physical and health hazards of the hazardous chemicals in the work area;

(5) Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area such as monitoring conducted by the employer, continuous monitoring devices, visual appearance or odor of hazardous chemicals when being released, etc.;

(6) The measures employees can take to protect themselves from these hazards, including specific procedures the employer has implemented to protect employees from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used;

(7) Frequency of training;

(8) General safety instructions on the handling, cleanup, and disposal of hazardous chemicals; and

(9) Employees' rights under this subchapter.

(c) Training programs addressing each of the requirements of subsection (b) of this section and conducted in full compliance with Title III of the federal Emergency Planning and Community Right to Know Act of 1986, shall be deemed to meet the requirements of this section.

(d) Public employers shall keep a record of the dates of training sessions given to their employees.

(e) Each public employer shall conduct the initial information and training program required pursuant to this section within one (1) year after July 1, 1991. This program may be conducted with the assistance of the director pursuant to §8-7-1009.

(f) The director shall have authority to promulgate rules and regulations in accordance with §8-7-1011:

(1) To exempt public employers from providing the information and training otherwise required by this section to employees with special skills and knowledge concerning hazardous chemicals, if such special skills and knowledge would make the information and training unnecessary; and

(2) To require public employers to provide refresher training for employees, in workplaces or in circumstances in

which the director reasonably determines such refresher training to be necessary and appropriate.

8-7-1009. Outreach activities of the director.

(a) The director shall develop and give each public employer a suitable form of notice providing employees with information regarding their rights under this subchapter.

(b) The director shall develop and maintain a general information and training assistance program to aid public employers. Such information and assistance shall be made available to all public employers. As part of the program, the director may develop and distribute a supply of informational leaflets on public employers' duties, employees' rights, and the effects of hazardous chemicals. The director shall make available the basic materials for this program within nine (9) months after July 1, 1991.

(c) The director may contract with state universities or other public or private organizations to develop and implement the outreach program.

8-7-1010. Rights of public employees.

(a) Public employees who may be exposed to hazardous chemicals shall be informed of such exposure and shall have access to the workplace chemical list, material safety data sheets for the chemicals on the list, and information and training as provided in this subchapter.

(b) No public employer shall discharge, or cause to be discharged, or otherwise discipline or discriminate against a public employee because the employee has requested information, filed a complaint, assisted an inspector of the director, or instituted or caused to be instituted any complaint or proceeding under or related to this subchapter or has testified or is about to testify in any such proceeding, or has exercised any rights afforded by this subchapter on behalf of the employee or other employees, nor shall any pay, position, seniority, or other benefits to which the employee may be entitled be lost because the employee exercised rights afforded by this subchapter.

(c) Any waiver of the benefits or requirements of this subchapter shall be against public policy and shall be null and

void. Any public employer's request or requirement that a person waive any rights under this subchapter as a condition of or in connection with employment shall constitute a violation.

8-7-1011. Rulemaking.

(a) The director may promulgate rules and regulations in accordance with the provisions of §§11-2-110, 11-2-112, and 11-2-113 to implement the provisions of this subchapter. This authority shall include but not be limited to the authority to implement changes corresponding to future amendments to the Hazard Communication Standard, to maintain consistency between this subchapter and the Hazard Communication Standard.

(b) The director shall promulgate regulations within six (6) months after July 1, 1991, requiring public employers to carry out information and training programs for their employees, and specifying the minimum content of education and training programs as provided in §8-7-1008.

8-7-1012. Trade secrets.

(a) A public employer may withhold the specific chemical identity, including the chemical name and other specific identification of a hazardous chemical, from a material safety data sheet or workplace chemical list only if all the following conditions are met:

(1) The claim that the information indicates that the specific chemical identity is being withheld as a trade secret;

(2) The material safety data sheet or the chemical indicates that the specific chemical identity is being withheld as a trade secret;

(3) All information contained in the material safety data sheet concerning the properties and effects of the hazardous chemical is disclosed; and

(4) The specific chemical identity is made available to health professionals, employees, and their designated representatives under the same conditions as are set out in the Hazard Communication Standard, 29 C.F.R. 1910.1200(i)(2)-(7); provided the information disclosable to United States Occupational Safety and Health Administration under the

Hazard Communication Standard shall also be disclosable to the directors.

(b) The director, upon his initiative, or upon request by an employee, designated representative, or public employer, shall request any or all of the data substantiating the trade secret claim to determine whether the claim is valid. The director shall protect from disclosure all information coming into his possession that is marked as confidential, and shall return all information so marked at the conclusion of this determination.

(c) Any information marked confidential pursuant to subsection (b) shall not be disclosed during any administrative or judicial proceeding held pursuant to this section. Administrative hearings held pursuant to this section shall not be open to the public, but otherwise shall be held in a manner consistent with that provided for in the Arkansas Administrative Procedure Act, §25-15-201 et seq., for hearings in contested cases. The proponent of disclosure shall also have the right to be heard.

(d) No employee of the State of Arkansas shall disclose any information designated as a trade secret other than within the provisions of this subchapter.

(e) Nothing in this section shall be construed as requiring the disclosure under any circumstances of process or percentages of mixture information that is a trade secret.

8-7-1013. Complaints and investigations.

(a) Complaints received orally or in writing from public employees, their designated representatives, or public employers related to alleged violations of this subchapter shall be investigated in a timely manner by the director.

(b) Officers or duly designated representatives of the director shall have the right of entry into any workplace or work area of a public employer during normal business hours to inspect and investigate complaints within reasonable limits and in a reasonable manner.

(c) The director shall have the same powers, duties, and authority to administer and enforce the provisions of this subchapter as are contained in §§11-2-108, 11-2-115, 11-2-116, and 11-2-118; provided, however, that if there is a conflict

between the provisions of this subchapter and the provisions named above, the provisions of this subchapter shall prevail.

8-7-1014. Enforcement.

(a) If the director determines that a public employer has violated a provision of this subchapter, the director shall issue an order to the official responsible for performing the duties required by this subchapter, directing that official to cease and desist the act or omission constituting the violation. Such an order shall constitute prima facie evidence of a violation in any enforcement action filed pursuant to §8-7-1015 of this subchapter.

(b) If the director determines that a public employer has violated §8-7-1008 relating to employee information and training and within sixty (60) days of issuance of a cease and desist order the public employer has not remedied the violation, the director may conduct a program or programs to remedy the violation and require such public employer to reimburse the director for the cost of doing so.

(c) Violation of this subchapter by a public employer shall be cause for adverse personnel action against the supervisor or supervisors responsible for the violation, including but not limited to suspension, demotion, withholding of annual career service recognition payments, or, in the case of serious and repeated violations, termination. Issuance of a cease and desist order by the director shall not be a prerequisite for such adverse personnel action, but such action shall only be taken in accordance with the civil service laws and regulations.

8-7-1015. Cause of action - Attorney fees.

(a) Any citizen denied the rights granted to him by this subchapter may commence a civil action against a public employer or responsible official of a public employer in the Pulaski County Circuit Court or the circuit court of the residence of the aggrieved party, if an agency of the state is involved, or any of the circuit courts of the appropriate judicial districts when any other public employer is involved. Issuance of a cease and desist order by the director shall not be a prerequisite to the commencement of such an action.

(b) Upon written application of the person denied the rights provided for in this subchapter, or any interested party, the court having jurisdiction shall fix a day the petition is to be heard within seven (7) days of the date of the application of the petitioner, and shall hear and determine the case.

(c) The circuit courts shall have jurisdiction to restrain violations of this subchapter and to order all appropriate relief, including, but not limited to, the disclosure of chemical information, the rehiring or reinstatement of employees discriminated against because of their exercise of their rights under this subchapter, and the payment of any compensation such employees actually lost as a result of such violations.

(d) Those who refuse to comply with the orders of the court shall be found guilty of contempt of court.

(e) In any action to enforce the rights granted by this subchapter, or in any appeal therefrom, the court shall assess against the defendant reasonable attorney fees and other litigation expenses reasonably incurred by a plaintiff who has substantially prevailed, unless the court finds that the position of the defendant was substantially justified or that other circumstances make an award of these expenses unjust. However, no expenses shall be assessed against the State of Arkansas or any of its agencies or departments. If the defendant has substantially prevailed in the action, the court may assess expenses against the plaintiff only upon a finding that the action was initiated primarily for frivolous or dilatory purposes.

8-7-1016. No effect on other legal duties.

The provision of information to a public employee pursuant to the provisions of this subchapter shall not be construed to affect the liability of a public employer with regard to the health and safety of an employee or other persons exposed to hazardous chemicals, nor shall it affect the employer's responsibility to take any action to prevent the occurrence of occupational disease as required under any other provision of law. The provision of information to an employee shall not affect any other duty or responsibility of a chemical manufacturer or distributor to warn ultimate users of a hazardous chemical under any other provision of law.

L. BLASTING

20-27-1101. Penalty.

Any person who knowingly violates any provision of this subchapter or any regulation or order adopted pursuant to this subchapter shall be guilty of a Class B misdemeanor.

20-27-1102. Rules and regulations - Enforcement - Administration.

(a) The Director of the Arkansas Department of Labor shall promulgate regulations to establish minimum standards for the qualifications of those individuals performing blasting in Arkansas.

(b) The Director of the Department of Labor shall implement, enforce, and administer the provisions of this subchapter and the regulations adopted pursuant thereto.

(c) Regulations under this section shall be adopted pursuant to the Arkansas Administrative Procedure Act, §25-15-101 et. seq.

(d) The Director of the Department of Labor is authorized to establish by regulation fees for certifying individuals as qualified to perform blasting in Arkansas. Such fees shall not exceed the sum of thirty dollars ($30.00) per applicant.

20-27-1103. Exemptions.

The provisions of this subchapter shall not apply to the following:

(1) Blasting conducted at a surface coal mine regulated by the Arkansas Department of Environmental Quality pursuant to the Arkansas Surface Coal Mining and Reclamation Act of 1979, §15-58-101 et seq.; and

(2) Blasting conducted during seismic operations regulated by the Oil and Gas Commission pursuant to §15-71-114.

20-27-1301. Title

This subchapter may be called the “Arkansas Quarry and Open Pit Mine Blasting Control Act”.

20-27-1302. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Blasting" means the use of explosives or a blasting agent;

(2) "Blasting agent" means any material or mixture, consisting of fuel and oxidizer, that is intended for blasting if the finished product, as mixed for use or shipment, cannot be detonated by means of a No. 8 test blasting cap when unconfined;

(3) "Contractor" means any person conducting blasting at a quarry or open pit mine other than the owner or operator and its employees;

(4) "Department" means the Department of Labor;

(5) "Director" means the Director of the Department of Labor;

(6) "Explosives" means any substance classified as an explosive by either state or federal law;

(7) "Mine" means any quarry or open pit;

(8) "Operator" means any person conducting surface mining operations at a quarry or open pit;

(9) "Owner" means the actual owner of the mine;

(10) "Person" means any individual, partnership, corporation, business, or other entity; and

(11) "Quarry" or "open pit mine" means any open excavation, prospect opening, pit, bank, or open-cut workings for the surface extraction of minerals, stone, or other product for commercial use, excluding coal.

20-27-1303. Blasting standards.

(a) Blasting shall be conducted to prevent injury to persons, damage to public or private property, adverse impact on any underground mine, and change in the course, channel, or availability of surface or ground water outside the mine's perimeter.

(b)(1) In blasting operations, airblast, shall not exceed the maximum limits set forth in 30 C.F.R. 816.67(b), at the location of any structure, residence, public building, school, church or commercial or institutional building outside the

perimeter of a mine and owned or leased by a person other than the mine owner and operator.

(2)(A) If necessary to prevent damage, the director may require lower maximum allowable airblast levels than those specified in subdivision (b)(1) of this section for use in the vicinity of a specific blasting operation.

(B) Such action shall only be taken following consultation with whatever expert or experts the director deems appropriate.

(3)(A) The director may require airblast measurement of any or all blasts and may specify the locations at which such measurements are taken.

(B) The measuring system shall have an upper-end flat frequency response of at least two hundred hertz (200 Hz). The measuring system shall also have a low-end frequency response of two hertz (2 Hz) and be within minus three decibels (-3dB) at two hertz (2 Hz).

(c)(1) Flyrock from blasting operations, traveling in the air or along the ground, should not be cast from the mine site.

(2) In the event that flyrock is cast from the mine site, the owner or operator and contractor shall be liable and responsible for any damages including clean up and removal of the flyrock.

(d)(1)(A) In blasting operations, ground vibration shall not exceed the maximum limits established in accordance with either the maximum peak particle velocity limits contained in 30 C.F.R. 816.67(d)(2), or the scaled-distance equation established at 30 C.F.R. 816. 67(d)(3), at the location of any structure, residence, public building, school, church, or commercial or institutional building outside the perimeter of a mine and owned or leased by a person other than the mine owner or operator.

(B) If a seismographic record for a blast exists or is required, the maximum limit for ground vibration shall be the peak particle velocity limits contained in 30 C.F.R. 816.67(d)(2), at any structure, residence, public building, school, church, or commercial or institutional building.

(2)(A) If necessary to prevent damage, the director may require lower maximum allowable ground vibration levels than

those specified in subdivision (d)(1) of this section for use in the vicinity of a specific blasting operation.

(B) Such action shall only be taken following consultation with whatever expert or experts the director deems appropriate.

(3) The director may require an owner or operator to conduct seismic monitoring of any or all blasts or may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

(e)(1) The maximum limits for airblast and ground vibration as specified in subdivisions (b)(1) and (d)(1) of this section shall be construed as the threshold below which blasting damage is unlikely to occur. The director, however, shall have the authority to promulgate regulations requiring more or less restrictive limits, as appropriate.

(2) Such action shall only be taken following consultation with whatever expert or experts the director deems appropriate.

(f)(1) In the event that a pit or quarry is closer than three hundred feet (300') from any public highway, road, or street, no blasting shall be conducted without the prior written approval of the director.

(2) Notwithstanding the provisions of subdivision (f)(1) of this section, any quarry or pit in existence on July 1, 1995, shall be allowed to continue operations without obtaining the written approval of the director.

(g)(1) All blasting operations shall be conducted between sunrise and sunset, unless extraordinary circumstances arise which would necessitate conducting a blast outside these hours.

(2) Such circumstances shall be documented in the blast records required by §20-27-1304.

(h)(1) Prior to the firing of a blast, the owner or operator or contractor shall follow a definite plan of warning signals that can be clearly seen or heard by anyone in the blasting area.

(2) The owner or operator shall inform all employees at the operation as to the established procedure.

20-27-1304. Notice of blasting operations.

(a)(1) Any owner or operator and contractor conducting blasting operations in this state on July 1, 1995, shall notify the

director of each site or location on which blasting operations are conducted.

(2) Such notice shall be filed with the department no later than October 1, 1995.

(b) Any owner or operator and contractor which, after July 1, 1995, begins blasting at a new site or location, or at a site on which no blasting has occurred for a period of six (6) consecutive months, shall notify the director of its operation at least twenty-four (24) hours in advance of the initial blast.

(c) The notice required by subsections (a) and (b) of this section shall be on a form approved by the director and shall include, but not be limited to, the following information:

(1) The name, address, and telephone number of the mine owner or operator;

(2) The name, address, and telephone number of the operator or contractor performing the blast;

(3) The location of the quarry site or open pit mine; and

(4) The location where the records of the blasting operations are to be maintained.

(d) All owners and operators and contractors shall notify the director in writing of any change of address or location.

20-27-1305. Recordkeeping.

(a)(1) The owner or operator shall retain a record of all blasts for at least three (3) years.

(2) Upon request, copies of these records shall be made available to the department for inspection.

(3) Such records shall contain the following data:

(A) The name of the operator or contractor conducting the blast;

(B) The location, date, and time of the blast;

(C) The name and signature and the state certification number of the blaster conducting the blast;

(D) The identification and direction and distance, in feet, from the nearest blast hole to the nearest structure, residence, public building, school, church, or commercial or institutional building outside the perimeter of the mine which is owned or leased by a person other than the mine owner or operator;

(E) The weather conditions, including those which may cause possible adverse blasting effects;

(F) The type of material blasted;

(G) The sketches of the blast pattern, including number of holes, burden, spacing, decks, and delay pattern;

(H) The diameter and depth of the holes:

(I) The types of explosives used;

(J) The total weight of explosives used per hole;

(K) The maximum weight of explosives detonated in an eight millisecond (8 mlsec.) period;

(L) The initiation system;

(M) The type and length of stemming;

(N) The mats or other protection used;

(O) The seismographic and airblast records, if required, which shall include:

(i)) The type of instrument, the sensitivity, and the calibration signal or certification of annual calibration;

(ii) The exact location of the instrument and the date, time, and distance from the blast;

(iii) The name of the person and firm who set up the instrument;

(iv) The name of the person and firm taking the reading;

(v) The name of the person and firm analyzing the seismographic record; and

(vi) The vibration and/or airblast level recorded;

(P) The reasons and conditions for each unscheduled blast; and

(Q) The reasons and conditions for any blast conducted before sunrise or after sunset.

(b)(1) The records required by subsection (a) of this section shall be maintained at the mine where the blast was conducted or at the regular business location of the owner or operator.

(2) Copies of the records required by subsection (a) of this section shall be maintained by the contractor.

20-27-1306. Insurance.

(a) All owners, operators, and contractors covered by the provisions of this subchapter shall maintain a policy of insurance issued by an insurance company authorized to do

business in Arkansas and insuring the owner, operator, or contractor against liability for personal injury or property damage arising out of the operation or use of the mine in the minimum amount of one million dollars ($1,000,000) for each incident or occurrence.

(b) Proof of such coverage shall be made available to the director or his authorized representative upon request.

20-27-1307. Exemptions - Owners and operators.

(a) The provisions of this subchapter shall not apply to any mine in existence or operation on July 1, 1995, unless the mine or quarry site has been the subject of a criminal or civil proceeding resulting from its blasting operations within the three-year period prior to January 1, 1995.

(b) Notwithstanding the provisions of subsection (a) of this section, the director's authority shall not be restricted with respect to:

(1) Mines or quarries which were in existence and operation on July 1, 1995, but which change owners or operators after July 1, 1995; or

(2) New or existing mines or quarries which were not in operation on July 1, 1995.

20-27-1308. Director - Powers and duties generally.

(a) In addition to other powers and authority provided by law, the director, or his authorized representative shall have the following authority:

(1) To promulgate rules and regulations for the administration and enforcement of this subchapter after public hearing and opportunity for public comment;

(2) To establish by rule or regulation standards for the performance of blasting operations at mines after public hearing and opportunity for public comment;

(3) To investigate as to any violation of this subchapter or any rule, regulation, or order issued thereunder;

(4) To administer oaths, take or cause to be taken the depositions of witnesses, and require, by subpoena, the attendance and testimony of witnesses and the production of all records and other evidence relative to any matter under investigation or hearing;

(5) To enter and inspect, during normal business hours, any mine, any place of business of a mine owner or operator, or any place of business of any contractor engaged in blasting operations at any mine for the purpose of ascertaining compliance with the provisions of this subchapter and any rule, regulation, or order issued thereunder. This right of entry includes the right to examine, inspect, and copy any appropriate records and to question any employees;

(6) To issue cease and desist orders, as well as orders directing that affirmative measures be taken to comply with this subchapter and any rule or regulation issued thereunder;

(7) To require, at his discretion, a mine owner or operator or contractor to offer a pre-blast survey of all buildings or structures up to a radius of one-half (1/2) mile of the perimeter of the mine prior to the initiation of blasting or the continuation of blasting under such terms and conditions as may be established by order of the director;

(8) To require, at his discretion, a mine owner or operator or contractor to develop and submit a blasting plan for approval;

(9) To require, at his discretion, a mine owner or operator or contractor to monitor and measure air blasts and/or ground vibration under such terms and conditions as may be established by order of the director, or to conduct such monitoring and measuring through his authorized representative;

(10) To issue a variance from any specific requirement of this subchapter, or any rule or regulation issued thereunder, provided that literal compliance would constitute an undue hardship and that reasonable safety of persons and property is secured;

(11) To certify to official acts;

(12) To assess civil penalties as provided in §20-27-1313; and

(13) To enforce generally the provisions of this subchapter and the rules, regulations, and orders issued thereunder.

(b) In determining whether to order a pre-blast survey or whether to order monitoring and measurement of air blasts and ground vibration, the director may consider the nature of any

written complaints made against that owner or operator or contractor or any written complaints about that specific mine location, as well as the number and frequency of such complaints.

(c) In case of failure of any person to comply with any subpoena lawfully issued under this section or upon the refusal of any witness to produce evidence or to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of any circuit court or judge thereof, upon application of the department, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued by the court or a refusal therein.

20-27-1309. Hearings, orders, and notices.

(a) All hearings conducted by the director and all orders, notices, and assessments shall conform to the requirements of the Arkansas Administrative Procedure Act, §25-15-201 et seq.

(b) Service of any notice, order, or assessment may be made by delivery to the person to be ordered or notified or by mailing it, postage prepaid, addressed to the person at his principal place of business as last of record with the department.

(c)(1) Any administrative order issued by the director shall be final, unless within twenty (20) days after service of notice thereof, the person charged with the violation or any complainant entitled to such notice notifies the director in writing that the order is contested.

(2) A complainant entitled to notice is any person who has made a written complaint within the past three (3) years to the department regarding the blasting operations of the person charged with the violation.

(d) In the event an order is contested, a final administrative order shall be made after hearing.

(e) Any final administrative action is subject to appeal pursuant to the Arkansas Administrative Procedure Act, §25-15-201 et seq.

20-27-1310. Cooperation with the State Fire Marshal.

(a) The director shall consult the State Fire Marshal regarding the adoption of any rules or regulations.

(b) The Department of Labor and the State Fire Marshal shall cooperate and coordinate their activities in order to avoid duplication of services.

20-27-1311. Existing rules and regulations - Orders - Remedies.

(a) All existing rules and regulations of any other state agency relating to subjects embraced within this subchapter shall remain in full force and effect unless expressly repealed, amended, or superseded by the state agency affected.

(b) All orders entered, permits granted, and pending legal proceedings instituted by any person, public or private, relating to subjects embraced within this subchapter shall remain unimpaired and in full force and effect until or unless superseded by actions taken by the director under this subchapter.

(c) No existing civil or criminal remedies, public or private, for any wrongful action relating to subjects embraced by this subchapter shall be excluded or impaired by the provisions of this subchapter.

20-27-1312. Criminal penalties.

(a) Any person who violates any provision of this subchapter, or who violates any rule, regulation, or order issued thereunder, shall be guilty of a Class A misdemeanor, except as provided in subsection (b) of this section.

(b)(1) It shall be unlawful for a person to:

(A) Violate any provision of this subchapter, or any rule, regulation, or order issued thereunder, and leave the state or remove his person from the jurisdiction of this state;

(B) Purposely, knowingly, or recklessly conduct blasting in a manner prohibited by this subchapter, or any rule, regulation, or order issued thereunder, and thereby create a substantial likelihood of adversely affecting the health, safety, welfare, or property of any person, including the state or any political subdivision of the state; or

(2) A person who violates the provisions of this subsection shall be guilty of a Class D felony.

(c) Purposely or knowingly make any false statement, representation, omission, or certification in any document

required to be maintained under this subchapter or to falsify, tamper with, or render inaccurate any monitoring device, method, or record required to be maintained under this subchapter.

20-27-1313. Civil penalties.

(a)(1) Any person who violates any provision of this subchapter, or who violates any rule, regulation, or order issued thereunder, may be assessed an administrative civil penalty by the director in an amount not to exceed ten thousand dollars ($10,000) per violation.

(2) Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.

(b)(1) Assessment of a civil penalty by the director shall be made no later than three (3) years from the date of the occurrence of the violation.

(2) The director, in his discretion, may accept payment of assessed civil penalties in installments.

(A) The assessment by the director shall be final, unless, within twenty (20) days after service of notice thereof by certified mail, the person charged with the violation or any complainant entitled to such notice notifies the director in writing that the proposed assessment is contested.

(B) In the event an assessment is contested, a final administrative determination shall be made pursuant to the Arkansas Administrative Procedure Act, §25-15-201 et seq.

(c) The amount of any assessment, when finally determined, may be recovered in a civil action brought by the director in a court of competent jurisdiction without paying costs or giving bond for costs.

(d)(1) Sums collected as reimbursement for expenses, costs, and damages to the department shall be deposited in the operating fund of the department.

(2) Sums collected as civil penalties shall be deposited into the general fund of the State Treasury.

(e) Notice of any assessment by the director shall be served on any person who has made a written complaint within the past three (3) years to the department regarding the blasting operations of the person charged with the violation.

20-27-1314. Restraint.

In addition to the civil penalty provided in §20-27-1313, the director is authorized to petition any court of competent jurisdiction, without paying costs or giving bond for costs, to:

(1)(A) Enjoin or restrain any violation of, or compel compliance with, the provisions of this subchapter and any rules, regulations, or orders issued thereunder.

(B) In situations where there is an imminent threat to public or worker safety or to property, the director may seek a temporary restraining order for the cessation of any blasting;

(2) Affirmatively order that such remedial measures be taken as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter; and

(3) Recover all costs, expenses, and damages to the department and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter.

20-27-1315. Private right of action.

Any person adversely affected by a violation of this subchapter, or any rules, regulations, or orders issued pursuant thereto, shall have a private right of action for relief against the violator.

20-27-1316. Joint and several liability.

The owner or operator of any quarry or open pit mine where a blast is conducted and any contractor conducting the blast shall be jointly and severally liable for violations of this subchapter and any rules or regulations issued thereunder.

20-27-1317. Injunctive relief.

In addition to all other remedies provided by this subchapter, the Attorney General of this state and the prosecuting attorney of a county may apply to the chancery court or the judge in vacation of the county where the quarry or open pit mine is located for an injunction to restrain, prevent, or abate a public nuisance related to the subjects embraced by this subchapter or any violation of any provision of this subchapter or the rules, regulations or orders issued thereunder.

M. TRENCHING AND EXCAVATION ON PUBLIC PROJECTS

22-9-212. Public improvements generally - Trench or excavation safety systems.

(a) Whenever any agency of this state or of any county, municipality, or school district, or other local taxing unit or improvement district, enters into a contract covered by the provisions of §§22-9-202 - 22-9-204 for the making of repairs or alterations or the erection of buildings or for the making of any other improvements, or for the construction or improvement of highways, roads, streets, sidewalks, curbs, gutters, drainage or sewer projects, or for any other construction project in which the public work or public improvement construction project involves any trench or excavation which equals or exceeds five feet (5') in depth, the agency, county, municipality, school district, local taxing unit, or improvement district shall require:

(1) That the current edition of Occupational Safety and Health Administration Standard for Excavation and Trenches Safety System, 29 CFR 1926, Subpart P, be specifically incorporated into the specifications for the project; and

(2) That the contract bid form include a separate pay item for trench or excavation safety systems to be included in the base bid.

(b) In the event a contractor fails to complete a separate pay item in accordance with the applicable provisions of subsection (a) of this section, the agency, county, municipality, school district, local taxing unit, or improvement district shall declare that the bid fails to comply fully with the provisions of the specifications and bid documents and will be considered invalid as a nonresponsive bid. The owners of the above-stated project shall notify the Department of Labor, Safety Division, of the award of a contract covered by this section.

N. VOLUNTARY PROGRAM FOR DRUG-FREE WORKPLACES

11-14-101. Legislative intent.

(a) It is the intent of the General Assembly to promote drug-free workplaces in order that employers in this state may be afforded the opportunity to maximize their levels of productivity, enhance their competitive positions in the marketplace, and research their desired levels of success without experiencing the costs, delays, and tragedies associated with work-related accidents resulting from drug or alcohol abuse by employees. It is further the intent of the General Assembly that drug and alcohol abuse be discouraged and that employees who choose to engage in drug or alcohol abuse face the risk of unemployment and the forfeiture of workers' compensation benefits.

(b) If an employer implements a drug-free workplace program in accordance with this chapter which includes notice, education, and procedural requirements for testing for drugs and alcohol pursuant to rules developed by the Workers' Health and Safety Division of the Workers' Compensation Commission, the covered employer may require the employee to submit to a test for the presence of drugs or alcohol, and if a drug or alcohol is found to be present in the employee's system at a level prescribed by statute or by rule adopted pursuant to this chapter, the employee may be terminated and may forfeit eligibility for workers' compensation medical and indemnity benefits. However, a drug-free workplace program must require the covered employer to notify all employees that it is a condition of employment for an employee to refrain from reporting to work or working with the presence of drugs or alcohol in the employee's body, and if an injured employee refuses to submit to a test for drugs or alcohol, the employee forfeits eligibility for workers' compensation medical and indemnity benefits. In the event of termination, an employee shall be entitled to contest the test results before the Department of Labor.

11-14-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Chain of custody" refers to the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances and providing for accountability at each stage in handling, testing, and storing specimens and reporting test results;

(2) "Confirmation test", "confirmed test", or "confirmed drug or alcohol test" means a second analytical procedure used to identify the presence of a specific drug or alcohol or metabolite in a specimen, which test must be different in scientific principle from that of the initial test procedure and must be capable of providing requisite specificity, sensitivity, and quantitative accuracy;

(3) "Covered employer" means a person or entity that employs a person, is covered by the Workers' Compensation Law, §11-9-101 et seq., maintains a drug free workplace pursuant to this chapter, and includes on the posting required by §11-14-105 a specific statement that the policy is being implemented pursuant to the provisions of this chapter. This chapter shall have no effect on employers who do not meet this definition;

(4) "Director" means the Director of the Workers' Health and Safety Division of the Workers' Compensation Commission;

(5) "Division" means the Workers' Health and Safety Division of the Workers' Compensation Commission;

(6) "Drug" means any controlled substance subject to testing pursuant to drug testing regulations adopted by the Department of Transportation. A covered employer shall test an individual for all such drugs in accordance with the provisions of this chapter. The director may add additional drugs by rule in accordance with §11-14-111;

(7) "Drug or alcohol rehabilitation program" means a service provider that provides confidential, timely and expert identification, assessment; and resolution of employee drug or alcohol abuse;

(8) “Drug test” or “test” means any chemical, biological, or physical instrumental analysis administered by a laboratory authorized to do so pursuant to this chapter for the purpose of determining the presence or absence of a drug or its metabolites pursuant to regulations governing drug testing adopted by the Department of Transportation or such other recognized authority approved by rule by the director;

(9) “Employee” means any person who works for salary, wages, or other remuneration for a covered employer;

(10)(A) “Employee assistance program” means an established program capable of:

(i) Providing expert assessment of employee personal concerns;

(ii) Confidential and timely identification services with regard to employee drug or alcohol abuse;

(iii) Referrals of employees for appropriate diagnosis, treatment, and assistance; and

(iv) Follow-up services for employees who participate in the program or require monitoring after returning to work.

(B) If, in addition to the above activities, an employee assistance program provides diagnostic and treatment services. These services shall in all cases be provided by the program;

(11) “Employer” means a person or entity that employs a person and that is covered by the Workers’ Compensation Law, §11-9-101 et seq.;

(12) “Initial drug or alcohol test” means a procedure that qualifies as a screening test or initial test pursuant to regulations governing drug or alcohol testing adopted by the Department of Transportation or such other recognized authority approved by rule by the director;

(13) “Job applicant” means a person who has applied for a position with a covered employer, who has been offered employment conditioned upon successfully passing a drug or alcohol test and who may have begun work pending the results of a drug or alcohol test;

(14) “Drug testing review officer” means a licensed physician, pharmacist, pharmacologist or similarly qualified individual employed with or contracted with a covered employer:

(A) Who has knowledge of substance abuse disorders, laboratory testing procedures, and chain or custody collection procedures;

(B) Who verifies positive, confirmed test results; and

(C) Who has the necessary medical training to interpret and evaluate an employee’s positive test result in relation to the employee’s medical history or any other relevant biomedical information;

(15) “Reasonable-suspicion drug testing” means drug or alcohol testing based on a belief that an employee is using or has used drugs or alcohol in violation of the covered employer’s policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. Among other things, such facts and inferences may be based upon:

(A) Observable phenomena while at work such as direct observation of drug or alcohol use or of the physical symptoms or manifestations of being under the influence of a drug or alcohol;

(B) Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance;

(C) A report of drug or alcohol use provided by a reliable and credible source;

(D) Evidence that an individual has tampered with a drug or alcohol test during employment with the current covered employer;

(E) Information that an employee has caused, contributed to or been involved in an accident while at work; or

(F) Evidence that an employee has used, possessed, sold, solicited, or transferred drugs or used alcohol while working or while on the covered employer’s premises or while operating the covered employer’s vehicle, machinery, or equipment;

(16) “Safety-sensitive position” means a position involving a safety-sensitive function pursuant to regulations governing drug or alcohol testing adopted by the Department of Transportation. For drug-free workplaces, the director is authorized to promulgate rules expanding the scope of “safety-sensitive position” to cases where impairment may present a

clear and present risk to co-workers or other persons. "Safety-sensitive position" means, with respect to any employer:

(A) A position in which a drug or alcohol impairment constitutes an immediate and direct threat to public health or safety, such as a position that requires the employee to:

(i) Carry a firearm;

(ii) Perform life-threatening procedures;

(iii)Work with confidential information or documents pertaining to criminal investigations; or

(iv) Work with controlled substances; or

(B) A position in which a momentary lapse in attention could result in injury or death to another person;

(17) "Specimen" means tissue, fluid, or a product of the human body capable of revealing the presence of alcohol or drugs or their metabolites;

(18) "Alcohol" has the same meaning in this chapter as when used in the federal regulations describing the procedures used for the testing of alcohol by programs operating pursuant to the authority of the Department of Transportation, currently compiled at 49 C.F.R. Part 40; and

(19) "Alcohol test" means an analysis of breath or blood or any other analysis which determines the presence and level or absence of alcohol as authorized by the Department of Transportation in its rules and guidelines concerning alcohol testing and drug testing.

11-14-103. Applicability.

This chapter applies to a drug-free workplace program implemented pursuant to rules adopted by the Director of the Workers' Health and Safety Division of the Workers' Compensation Commission. The application of the provisions of this chapter is subject to the provisions of any applicable collective bargaining agreement. Nothing in the program authorized by this chapter is intended to authorize any employer to test any applicant or employee for alcohol or drugs in any manner inconsistent with federal constitutional or statutory requirements, including those imposed by the Americans with Disabilities Act and the National Labor Relations Act.

11-14-104. Testing for drugs or alcohol authorized - Conditions for testing - Effect of failure to comply.

(a) A covered employer may test a job applicant for alcohol or for any drug described in §11-14-102. Provided, for public employees such testing shall be limited to the extent permitted by the Arkansas Constitution and the United States Constitution. A covered employer may test an employee for any drug and at any time as set out in §11-14-106. An employee who is not in a safety-sensitive position may be tested for alcohol only when the test is based upon reasonable suspicion. An employee in a safety-sensitive position may be tested for alcohol use at any occasion described in §§11-14-102 - 11-14-105, inclusive. In order to qualify as having established a drug-free workplace program which affords a covered employer the ability to qualify for the discounts provided under §11-14-112, all drug or alcohol testing conducted by covered employers shall be in conformity with the standards and procedures established in this chapter and all applicable rules adopted pursuant to this chapter. If a covered employer fails to maintain a drug-free workplace program in accordance with the standards and procedures established in this section, and in applicable rules, the covered employers shall not be eligible for discounts under §11-14-112. All covered employers qualifying for and receiving discounts provided under §11-14-112 must be reported annually by the insurer to the Director of the Workers' Health and Safety Division of the Workers' Compensation Commission.

(b) The director shall adopt a form pursuant to rule-making authority, which form shall be used by the employer to certify compliance with the provisions of this chapter. Substantial compliance in completing and filing the form with the director shall create a rebuttable presumption that the employer has established a drug free workplace program and is entitled to the protection and benefit of this chapter. Prior to granting any premium credit to an employer pursuant to §11-14-112, all insurers shall obtain such form from the employer.

(c) It is intended that any employer required to test its employees pursuant to the requirements of any federal statute or regulation shall be deemed to be in conformity with this section as to the employees it is required to test by those

standards and procedures designated in that federal statute or regulation. All other employees of such employer shall be subject to testing as provided in this chapter in order for such employer to qualify as having a drug free workplace program.

11-14-105. Written policy statement.

(a) One (1) time only prior to testing, a covered employer shall give all employees and job applicants for employment a written policy statement which contains:

(1) A general statement of the covered employer's policy on employee drug or alcohol use, which must identify:

(A) The types of drug or alcohol testing an employee or job applicant may be required to submit to, including reasonable-suspicion drug or alcohol testing or drug or alcohol testing conducted on any other basis; and

(B) The actions the covered employer may take against an employee or job applicant on the basis of a positive confirmed drug or alcohol test result;

(2) A statement advising the employee or job applicant of the existence of this section;

(3) A general statement concerning confidentiality;

(4) Procedures for employees and job applicants to confidentially report to a drug testing officer the use of prescription or nonprescription medications to a drug testing review officer after being tested, but only if the testing process has revealed a positive result for the presence of alcohol or drug use;

(5) The consequences of refusing to submit to a drug or alcohol test;

(6) A representative sampling of names, addresses, and telephone numbers of employee assistance programs and local drug or alcohol rehabilitation programs;

(7) A statement that:

(A) An employee or job applicant who receives a positive confirmed test result may contest or explain the result to the drug testing review officer within five (5) working days after receiving written notification of the test result;

(B) If an employee's or job applicant's explanation or challenge is unsatisfactory to the drug testing review officer, the drug testing review officer shall report a positive test result back to the covered employer; and

(C) A person may contest the drug or alcohol test result pursuant to rules adopted by the Workers' Health and Safety Division of the Workers' Compensation Commission;

(8) A statement informing the employee or job applicant of the employee's responsibility to notify the laboratory of any administrative or civil action brought pursuant to this section;

(9) A list of all drug classes for which the employer may test;

(10) A statement regarding any applicable collective bargaining agreement or contract and any right to appeal to the applicable court;

(11) A statement notifying employees and job applicants of their right to consult with a drug testing review officer for technical information regarding prescription or nonprescription medication; and

(12) A statement complying with the requirements for notice under §11-14-101.

(b) A covered employer shall ensure that at least sixty (60) days elapse between a general one-time notice to all employees that a drug free workplace program is being implemented and the effective date of the program;

(c) A covered employer shall include notice of drug and alcohol testing on vacancy announcements for positions for which drug or alcohol testing is required. A notice of the covered employer's drug and alcohol testing policy must also be posted in an appropriate and conspicuous location on the covered employer's premises, and copies of the policy must be made available for inspection by the employees or job applicants of the covered employer during regular business hours in the covered employer's personnel office or other suitable locations.

(d) Subject to any applicable provisions of a collective bargaining agreement or any applicable labor law, a covered employer may rescind its coverage under this chapter by posting a written and dated notice in an appropriate and conspicuous location on its premises. The notice shall state

that the policy will no longer be conducted pursuant to this chapter. The employer shall also provide sixty (60) days' written notice to the employer's workers' compensation insurer of the rescission. As to employees and job applicants, the rescission shall become effective no earlier than sixty (60) days after the date of the posted notice.

(e) The director shall develop a model notice and policy for drug-free workplace programs.

11-14-106. Required drug or alcohol tests.

(a) To the extent permitted by law, a covered employer who voluntarily establishes a drug-free workplace is required to conduct the following types of drug or alcohol tests:

(1) JOB APPLICANT DRUG AND ALCOHOL TESTING. A covered employer must require job applicants to submit to a drug test after a conditional offer of employment and may use a refusal to submit to a drug test or a positive confirmed drug test as a basis for refusing to hire a job applicant. An employer may test job applicants for alcohol, but is not required to, after a conditional offer of employment. Limited testing of applicants, only if it is based on a reasonable classification basis, is permissible in accordance with a Workers' Health and Safety Division of the Workers' Compensation Commission rule;

(2) REASONABLE-SUSPICION DRUG AND ALCOHOL TESTING. A covered employer must require an employee to submit to reasonable-suspicion drug or alcohol testing. A written record shall be made of the observations leading to a controlled-substances reasonable suspicion test within twenty-four (24) hours of the observed behavior or before the results of the test are released, whichever is earlier. A copy of this documentation shall be given to the employee upon request, and the original documentation shall be kept confidential by the covered employer pursuant to §11-14-109 and shall be retained by the covered employer for at least one (1) year;

(3) ROUTINE FITNESS-FOR-FOR DUTY DRUG TESTING. (A) A covered employer shall require an employee to undergo drug or alcohol testing, if as a part of the employer's written policy, the test is conducted as a routine

part of a routinely scheduled employee fitness-for-duty medical examination or is scheduled routinely for all members of an employment classification or group. Provided, a public employer may require scheduled, periodic testing only of employees who:

(i) Are police or peace officers;

(ii) Have drug interdiction responsibilities;

(iii) Are authorized to carry firearms;

(iv) Are engaged in activities which directly affect the safety of others;

(v) Work in direct contact with inmates in the custody of the Department of Correction; or

(vi) Work in direct contact with minors who have been adjudicated delinquent or who are in need of supervision in the custody of the Department of Human Services.

(B) This subdivision does not require a drug or alcohol test if a covered employer's personnel policy on July 1, 2000, does not include drug or alcohol testing as part of a routine fitness-for-duty medical examination. The test shall be conducted in a nondiscriminatory manner. Routine fitness-for-duty drug or alcohol testing of employees does not apply to volunteer employee health screenings, employee wellness programs, programs mandated by governmental agencies, or medical surveillance procedures that involve limited examinations targeted to a particular body part or function;

(4) FOLLOW-UP DRUG TESTING. If the employee in the course of employment enters an employee assistance program for drug-related or alcohol-related problems or a drug or alcohol rehabilitation program, the covered employer must require the employee to submit to a drug or alcohol test, as appropriate, as a follow-up to such program, unless the employee voluntarily entered the program. In those cases, the covered employer has the option to not require follow-up testing. If follow-up testing is required, it must be conducted at least one (1) time per year for a two-year period after completion of the program. Advance notice of a follow-up testing date must not be given to the employee to be tested; and

(5) POST-ACCIDENT TESTING. After an accident which results in an injury, the covered employer shall require

the employee to submit to a drug or alcohol test in accordance with the provisions of this chapter.

(b) This chapter does not preclude an employer from conducting any lawful testing of employees for drugs or alcohol that is in addition to the minimum testing required under this chapter.

11-14-107. Testing subject to Department of Transportation procedures - Verification - Chain of custody procedures - Costs - Discrimination on grounds of voluntary treatment prohibited.

(a) All specimen collection and testing for drugs and alcohol under this chapter shall be performed in accordance with the procedures provided for by the Department of Transportation rules for workplace drug and alcohol testing compiled at 49 C.F.R., Part 40.

(b) A covered employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation on an employee or job applicant on the sole basis of a positive test result that has not been verified by a confirmation test and by a drug testing review officer.

(c) A covered employer that performs drug testing or specimen collection shall use chain-of-custody procedures established by regulations of the Department of Transportation of such other recognized authority approved by rule by the Director of the Workers' Health and Safety Division of the Workers' Compensation Commission governing drug testing.

(d) A covered employer shall pay the cost of all drug and alcohol tests, initial and confirmation, which the covered employer requires of employees. An employee or job applicant shall pay the costs of any additional drug or alcohol tests not required by the covered employer.

(e) A covered employer shall not discharge, discipline, or discriminate against an employee solely upon the employee's voluntarily seeking treatment while under the employ of the covered employer for a drug-related or alcohol-related problem if the employee has not previously tested positive for drug or alcohol use, entered an employee assistance program for drug-related or alcohol related problems, or entered a drug or alcohol rehabilitation program. Unless otherwise provided by a

collective bargaining agreement, a covered employer may select the employee assistance program or drug or alcohol rehabilitation program if the covered employer pays the cost of the employee's participation in the program. However, nothing in this chapter is intended to require any employer to permit or provide such a rehabilitation program.

(f) If drug or alcohol testing is conducted based on reasonable suspicion, the covered employer shall promptly detail in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing. A copy of this documentation shall be given to the employee upon request, and the original documentation shall be kept confidential by the covered employer pursuant to §11-14-101 and shall be retained by the covered employer for at least one (1) year.

11-14-108. Drug or alcohol use not handicap or disability - Drug or alcohol use cause for firing or failure to hire - Miscellaneous provisions.

(a) An employee or job applicant whose drug or alcohol test result is confirmed as positive in accordance with this section shall not by virtue of the result alone be deemed to have a handicap or disability as defined under federal, state, or local handicap and disability discrimination laws.

(b) A covered employer who discharges or disciplines an employee or refuses to hire a job applicant in compliance with this section is considered to have discharged, disciplined, or refused to hire for cause. Nothing in this chapter shall be construed to amend or affect the employment-at-will doctrine.

(c) No physician-patient relationship is created between an employee or job applicant and a covered employer or any person performing or evaluating a drug or alcohol test solely by the establishment, implementation, or administration of a drug or alcohol testing program. This section in no way relieves the person performing the test from responsibility for acts of negligence in performing the tests.

(d) Nothing in this section shall be construed to prevent a covered employer from establishing reasonable work rules related to employee possession, use, sale, or solicitation of drugs or alcohol, including convictions for offenses relating to

drugs or alcohol, and taking action based upon a violation of any of those rules.

(e) This section does not operate retroactively and does not abrogate the right of an employer under state law to lawfully conduct drug or alcohol tests or implement lawful employee drug-testing programs. The provisions of this chapter shall not prohibit an employer from conducting any drug or alcohol testing of employees which is otherwise permitted by law.

(f) If an employee or job applicant refuses to submit to a drug or alcohol test, the covered employer is not barred from discharging or disciplining the employee or from refusing to hire the job applicant. However, this subsection does not abrogate the rights and remedies of the employee or job applicant as otherwise provided in this section.

(g) This section does not prohibit an employer from conducting medical screening or other tests required, permitted, or not disallowed by any statute, rule, or regulation for the purpose of monitoring exposure of employees to toxic or other unhealthy substances in the workplace or in the performance of job responsibilities. Such screening or testing is limited to the specific substances expressly identified in the applicable statute, rule, or regulation, unless prior written consent of the employee is obtained for other tests. Such screening or testing need not be in compliance with the rules adopted by the Workers' Health and Safety Division of the Workers' Compensation Commission and the Department of Health. If applicable, such drug or alcohol testing must be specified in a collective bargaining agreement as negotiated by the appropriate certified bargaining agent before such testing is implemented.

(h) No cause of action shall arise in favor of any person based upon the failure of an employer to establish a program or policy for drug or alcohol testing.

11-14-109. Confidentiality of records.

(a) All information, interviews, reports, statements, memoranda, and drug or alcohol test results, written or otherwise, received by the covered employer through a drug or alcohol testing program are confidential communications and may not be used or received in evidence, obtained in discovery,

or disclosed in any public or private proceedings except in accordance with this section or in determining compensability under this chapter or the Workers' Compensation Law, §11-9-101 et seq.

(b) Covered employers, laboratories, drug testing review officers, employee assistance programs, drug or alcohol rehabilitation programs, and their agents who receive or have access to information concerning drug or alcohol test results shall keep all information confidential. Release of such information under any other circumstance is authorized solely pursuant to a written consent form signed voluntarily by the person tested, unless such release is compelled by a hearing officer or a court of competent jurisdiction pursuant to an appeal taken under this section relevant to a legal claim asserted by the employee or is deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain, at a minimum:

(1) The name of the person who is authorized to obtain the information;

(2) The purpose of the disclosure;

(3) The precise information to be disclosed;

(4) The duration of the consent; and

(5) The signature of the person authorizing release of the information.

(c) Information on drug or alcohol test results for tests administered pursuant to this chapter shall not be released or used in any criminal proceeding against the employee or job applicant. Information released contrary to this section is inadmissible as evidence in any such criminal proceeding.

(d) This section does not prohibit a covered employer, agent of such employer, or laboratory conducting a drug or alcohol test from having access to employee drug or alcohol test information or using such information when consulting with legal counsel in connection with actions brought under or related to this section, or when the information is relevant to its defense in a civil or administrative matter. Neither is this section intended to prohibit disclosure among management as is reasonably necessary for making disciplinary decisions

relating to violations of drug or alcohol standards of conduct adopted by an employer.

(e) A person who discloses confidential medical records of an employee except as provided in this chapter shall be deemed guilty of a Class C misdemeanor.

11-14-110. Licensure of testing laboratory.

(a) A laboratory may not analyze initial or confirmation test specimens unless:

(1) The laboratory is licensed and approved by the Department of Health, using criteria established by the Department of Health and Human Services as guidelines for modeling the state drug free testing program pursuant to this section, or the laboratory is certified by the Department of Health and Human Services, the College of American Pathologists, or such other recognized authority approved by rule by the director. The Department of Health may license and approve any new laboratory to analyze initial or confirmation test specimens under the provisions of this chapter and may charge a fee not to exceed two thousand dollars ($2,000) for the license and approval of the new laboratory; and

(2) The laboratory complies with the procedures established by the Department of Transportation for a workplace drug testing program or such other recognized authority approved by the Director of the Workers' Health and Safety Division of the Workers' Compensation Commission.

(3) The fees set forth in this section shall be cash funds of the Department of Health and shall be deposited as provided in §19-4-801 et seq.

(b) Confirmation tests may be conducted only by a laboratory that meets the requirements of subsection (a) of this section and is certified by either the Substance Abuse and Mental Health Services Administration or the Forensic Urine Testing Programs of the College of American Pathologists.

11-14-111. Rules and regulations.

(a) The Director of the Workers' Health and Safety Division of the Workers' Compensation Commission is authorized to adopt rules, using criteria established by the

Department of Health and Human Services and the Department of Transportation as guidelines, for modeling the state drug and alcohol testing program, concerning, but not limited to:

(1) Standards for licensing drug and alcohol testing laboratories and suspension and revocation of such licenses;

(2) Body specimens and minimum specimen amounts that are appropriate for drug or alcohol testing;

(3) Methods of analysis and procedures to ensure reliable drug or alcohol testing results, including the use of breathalyzers and standards for initial tests and confirmation tests;

(4) Minimum cut-off detection levels for alcohol, each drug, or metabolites of such drug for the purposes of determining a positive test result;

(5) Chain-of-custody procedures to ensure proper identification, labeling, and handling of specimens tested; and

(6) Retention, storage, and transportation procedures to ensure reliable results on confirmation tests and retests.

(b) The director is authorized to adopt relevant federal rules concerning drug and alcohol testing as a minimum standard for testing procedures and protections. All such rules shall be promulgated in accordance with the Arkansas Administrative Procedure Act, §25-15-201 et seq.

(c) The director shall consider drug testing programs and laboratories operating as a part of the Forensic Urine Drug Testing Programs of the College of American Pathologists in issuing guidelines or promulgating rules relative to recognized authorities in drug testing.

(d) The director is authorized to set education program requirements for drug-free workplaces by rules promulgated in accordance with the requirements of the Arkansas Administrative Procedure Act, §25-15-201 et seq. Such requirements shall not be more stringent than the federal requirements for workplaces regulated by Department of Transportation rules.

11-14-112. Rating plans based on drug-free workplace program participation.

The Insurance Commissioner shall approve rating plans for workers' compensation insurance that give specific identifiable

consideration in the setting of rates to employers that implement a drug free workplace program pursuant to rules adopted by the Workers' Health and Safety Division of the Workers' Compensation Commission. The plans must take effect January 1, 2000 , must be actuarially sound, and must state the savings anticipated to result from such drug testing. The credit shall be at least five percent (5%) unless the commissioner determines that five percent (5%) is actuarially unsound. The commissioner is also authorized to develop a schedule of premium credits for workers' compensation insurance for employers who have safety programs that attain certain criteria for safety programs. The commissioner shall consult with the Director of the Department of Labor in setting such criteria.

CHAPTER 7

MISCELLANEOUS LAWS AFFECTING LABOR

Chapter 7
MISCELLANEOUS LABOR LAWS

A. VOTING TIME

7-1-102. Work time to be scheduled for voting - Penalty.

Each employer in the state shall schedule the work hours of employees on election days so that each employee will have an opportunity to exercise the right of franchise. Any employer who fails or refuses to comply with the provisions of this section shall upon conviction be subject to a fine of not less than twenty-five dollars ($25.00) nor more than two hundred fifty dollars ($250).

B. JURY DUTY

16-31-106. Penalty for employees' service prohibited.

(a)(1) Any person who is summoned to serve on jury duty shall not be subject to discharge from employment, loss of sick leave, loss of vacation time, or any other form of penalty as a result of his or her absence from employment due to jury duty, upon giving reasonable notice to his or her employer of the summons.

(2) No employer shall subject an employee to discharge, loss of sick leave, loss of vacation time, or any other form of penalty on account of his or her absence from employment by reason of jury duty.

(b) Any person violating the provisions of this section shall be guilty of a Class A misdemeanor.

C. EMPLOYMENT OF CITIZENS

22-9-101. Observation by registered professionals required.

(a) Neither the state nor any township, county, municipality, village, or other political subdivision of the state shall engage in the construction of any public works involving engineering or architecture for which the plans, specifications, and estimates have not been made by, and the construction executed under the observation of, a registered professional

engineer or architect, in their respective areas of expertise, who are licensed to practice under the laws of Arkansas.

(b) Nothing in this section shall be held to apply to any public works wherein the contemplated construction expenditure:

(1) For an engineering project does not exceed twenty-five thousand dollars ($25,000) or

(2) For an architectural project does not exceed one hundred thousand dollars ($100,000).

(c) This section shall not apply to any school district, county, municipality, or township project which is planned and executed according
to plans and specifications furnished by authorized state agencies.

D. LEAVE OF ABSENCE FOR PUBLIC SERVICE

21-4-101. Leave of absence for public service.

(a) Any person who is employed by any person, firm, or corporation in the State of Arkansas shall be granted a leave of absence, upon the election of any such employee to a public office in the State of Arkansas, or upon appointment by the Governor of any such person to a board or commission in the State of Arkansas, which office requires their absence from their employment.

(b) The leave of absence shall be for such period as the employee may request, not to exceed the duration of the term of office to which the employee has been elected.

(c) The granting of the leave of absence by the employer shall not be held to impair the employee's seniority rights of the job, nor shall the departmental seniority of the employee be broken for job purposes.

E. MEDIATION AND CONCILIATION

11-2-201. Title.

This subchapter may be cited as the "Arkansas Mediation and Conciliation Service Nondisclosure Act."

11-2-202. Policy.

It is declared to be the public policy of the State of Arkansas that the successful effectuation of the mission of the Arkansas Mediation and Conciliation Service requires that its mediators and employees maintain a reputation for impartiality and integrity. Labor and management or other interested parties participating in mediation efforts must have the assurance and confidence that information disclosed to mediators and other employees of the service will not subsequently be divulged, either voluntarily or by compulsion, even after the individual is no longer connected with the service.

11-2-203. Definitions.

For the purpose of this subchapter, unless the context otherwise requires:

(1) "Director" means the Director of the Department of Labor;

(2) "Person" means one (1) or more individuals, joint ventures, partnerships, associations, corporations, states, municipalities, business trusts, legal representatives, or any organized group of employees.

(3) "Service" means the Arkansas Mediation and Conciliation Service of the Department of Labor; and

(4) "State" means the State of Arkansas.

11-2-204. Records and information confidential.

(a) All files, reports, letters, memoranda, minutes, documents, or other papers in the official custody of the Arkansas Mediation and Conciliation Service or any of its employees, or any other information, whether written or not, obtained in the course of any employee's official duties, relating to or acquired in its or their official activities under the labor laws of the state or the rules and regulations lawfully promulgated by the Director of the Department of Labor, are confidential.

(b) No confidential records or information shall be disclosed to any unauthorized person, or be taken or withdrawn, copied, or removed from the custody of the service or its employees or former employees, by any person or by any

agent or representative of the person without the prior written consent of the representatives of both parties to the dispute involved.

(c) All information and material prepared or received by officers or employees shall be held in strictest confidence.

(d) Papers, reports, and copies thereof pertaining to or a part of dispute case files are not personal property but are the property of the state.

(e) Officers or employees terminating their connection with the service shall not be allowed to either keep or obtain copies of dispute case material or other official papers. Furthermore, all information, whether written or not, obtained in the course of their official duties must, after termination of their connection with the service, be treated by former employees with the same confidentiality as if they were still connected with the service.

11-2-205. Compliance with subpoenas.

(a) No officer, employee, former employee, or other person officially connected or formerly officially connected to the Arkansas Mediation and Conciliation Service shall produce or present any confidential records of the service or testify in behalf of any party to any cause pending in any arbitration or other proceedings or court or before any board, commission, committee, tribunal, investigatory body, or administrative agency of the United States or of any state, territory, the District of Columbia, or the state or any municipality or political subdivision thereof with respect to facts or other matters coming to his knowledge in his or her official capacity, whether in answer to an order, subpoena duces tecum, or otherwise, without the prior written consent of the representatives of both parties to the dispute.

(b)(1) Whenever any subpoena or subpoena duces tecum calling for confidential records or testimony as described in subsection (a) of this section has been served upon any officer, employee, or other person, he or she will appear in answer thereto and, unless otherwise expressly agreed to by the representatives of both parties to the dispute, respectfully decline, by reason of this section, to produce or present the confidential records or to give testimony.

(2) Immediately upon receipt of the subpoena, the mediator or former mediator or employee should contact the Director of the Department of Labor, who shall immediately notify the staff attorneys of the Department of Labor of the state to ensure that the procedures set forth in this subchapter will be followed. The director then shall instruct the staff attorneys to appear in behalf of the mediator and protect the service from any disclosure which violates the provisions contained herein.

(c) In the event the court insists that the mediator testify or produce documents, the staff attorneys of the department shall be further instructed to take immediate steps to procure the release of the mediator pending an appeal from the court's decision.

11-2-206. Judicial review.

(a) The mediator or the Director of the Department of Labor on his or her behalf or the Attorney General on his or her behalf may obtain a review of the order requiring him or her to testify.

(1) The review may be obtained by filing in the Supreme Court, within thirty (30) days following the issuance of the order, a written petition praying that the order be modified or set aside.

(2) A copy of the petition shall be forthwith transmitted by the Clerk of the Supreme Court to the clerk of the court issuing the order to testify or to produce documents and to other parties, and thereupon that clerk shall file in the Supreme Court the record of the proceedings.

(b)(1) Upon filing, the Supreme Court shall have jurisdiction of the proceeding and of the questions determined therein.

(2) The Supreme Court shall have power to grant such temporary relief or restraining order as it deems just and proper and to make and enter upon the pleadings, testimony, and proceedings set forth in the record a decree affirming, modifying, or setting aside, in whole or in part, the order of the court issuing its order to the mediator to testify or to produce and enforcing the order to the extent that it is affirmed or modified.

F. BOARD OF ELECTRICAL EXAMINERS

17-28-101. Definitions

As used in this chapter, unless the context otherwise requires:

(1) "Air conditioning electrician" means any individual who is limited to a license classification possessing the necessary qualifications, training, and technical knowledge for the installation, maintenance, and extension of electrical conductors and equipment solely for the purpose of supplying heating and air conditioning and refrigeration units;

(2) "Electrical apprentice" means any person whose principal occupation is the learning of and assisting in the installation of electrical work under the direct supervision of a licensed journeyman electrician or master electrician;

(3) "Electrical contractor" means any person, member, or employee of a firm, partnership, or corporation engaged in the business of installing, erecting, repairing, or contracting to install, erect, or repair electrical wires or conductors to be used for the transmission of electric light, heat, power, or signaling purposes, or to install or repair moulding, ducts, raceways, or conduits, for the reception or protection of such wires or conduits, or any electrical machinery, apparatus, or systems to be used for electrical light, heat, power, or signaling purposes;

(4) "Electrical work" means:

(A) Installations of electric conductors and equipment within or on public and private buildings or other structures, including recreational vehicles, and floating buildings; and other premises such as yards, carnivals, parking and other lots, and industrial substations;

(B) Installations of conductors that connect to the supply of electricity;

(C) Installations of other outside conductors on the premises;

(5) "Industrial maintenance electrician" means any individual who possesses the necessary qualifications, training, and technical knowledge to maintain and extend electrical conductors and equipment for electrical power and control

systems on or within industrial, manufacturing, or similar type facilities. He or she shall be capable of doing such work in accordance with standard rules and regulations governing that work;

(6) "Journeyman electrician" means any individual who possesses the necessary qualifications, training, and technical knowledge to install, maintain, and extend electrical conductors and equipment. He or she shall be capable of doing such work in accordance with plans and specifications furnished him or her in accordance with standard rules and regulations governing the work;

(7) "Master electrician" means any individual who possesses the necessary qualifications, training, and technical knowledge to plan, layout, and supervise the installation, maintenance, and extension of electrical conductors and equipment;

(8) "Primary residence" means an unattached single-family dwelling used as the person's primary place of residence;

(9) "Residential journeyman electrician" means the classification by which the licenses and electrical work of journeyman electricians may be limited to the installation, alteration, repair, maintenance or renovation of electrical facilities for one and two-family dwellings; and

(10) "Residential master electrician" means the classification by which the licenses and electrical work of master electricians may be limited to planning and supervising the installation, maintenance and extension of electrical facilities for one and two family dwellings.

17-28-102. Construction and exemptions.

(a) The provisions of this chapter shall not apply to:

(1) The construction, installation, maintenance, repair, or renovation by any public utility, as that term is defined by § 23-1-101(9)(A), by any rural electric association or cooperative, or by any municipally owned utility, of any transmission or distribution lines or facilities incidental to their business and covered under other nationally recognized safety standards, or to any other such activity when performed by any duly authorized employee, agent, contractor, or subcontractor

of any such public utility, association, cooperative, or municipally owned utility;

(2) The construction, installation, maintenance, repair or renovation by any industry, as that term is defined in subsection (f) of this section, of any electric conductors or equipment or facilities incidental to their business and covered under other nationally recognized safety standards or to any other such activity when performed by any duly authorized employee of any such industry;

(3) The construction, installation, maintenance, repair, or renovation of telephone equipment, computer systems, or satellite systems by a person, firm, or corporation engaged in the telecommunications or information systems industry when such activities involve low-voltage work exclusively for communication of data, voice, or other signaling purposes, including fire alarm systems, security systems and environmental control systems that are not an integral part of a telecommunications system;

(4) The construction, installation, maintenance, repair or renovation of any nonresidential farm building or structure; and

(5) The construction and manufacture of manufactured homes covered by the Manufactured Home Construction and Safety Standards Act, 42 U.S.C. §4501 et seq.; and

(6) Any industry, as that term is defined in subsection (f) of this section, or group of industries under common ownership or control, with assets in this state of one billion dollars ($1,000,000,000) or more, provided that the exemption provided in this subdivision (a)(6) shall only apply to projects commenced between July 1, 2001, and December 31, 2003.

(b) Nothing in this chapter shall be construed to require an individual to hold a license before doing electrical work on his or her primary residence except as otherwise required by state law, regulations or local ordinances. The exemption from compliance with the licensing standards shall not be referred to in any way, and shall not be any evidence of the lack of negligence or the exercise of due care by a party at a trial of any civil action to recover damages by any party.

(c)(1) Any holder of a state-issued heating, ventilation, air conditioning and refrigeration or HVACR, license may run line voltage power wiring, in compliance with the state electric

code from a disconnect box to an outdoor HVACR unit within a distance not to exceed ten feet (10') from any point of the HVACR equipment without obtaining an electrician's license as required by this chapter.

(2) Any person licensed by the Commission on Water Well Construction pursuant to the provisions of the Arkansas Water Well Construction Act, §17-50-101 et seq. and subject to that commission's regulations and to the National Electric Code may run power and control wiring from an existing disconnect box to water well equipment without obtaining an electrician's license as required by this chapter. Nothing in this subdivision (c)(2)shall be construed to allow a licensed water well installer or contractor to alter the existing electrical service to any building or structure.

(d) Nothing in this chapter shall be construed as repealing, modifying, or affecting in any way the provisions of §17-25-101 et. seq.

(e) Nothing in this chapter shall be construed to require an employee of a hospital to hold a license in order to perform minor repairs or make minor alterations to existing electrical facilities during the normal performance of his or her duties with a hospital licensed by the Department of Health.

(f) For the purposes of this chapter, the term "industry" means manufacturing, processing and refining facilities, warehouses, distribution facilities, repair and maintenance facilities, agricultural facilities, and corporate and management offices located on industrial sites.

17-28-103. Disposition of funds.

All funds received by the Board of Electrical Examiners of the State of Arkansas under the provisions of this chapter shall be deposited as special revenues in the State Treasury to the credit of the Department of Labor Special Fund, there to be used by the Department of Labor in carrying out the functions, powers, and duties as set out in this chapter and to defray the costs of the maintenance, operation, and improvements required by the department in carrying out the functions, powers, and duties otherwise imposed by law on the department or the Director of the Department of Labor.

17-28-201. Creation - Members.

(a) There is created a Board of Electrical Examiners of the State of Arkansas.

(b) The board shall consist of the Director of the Department of Labor or his or her authorized representative and eight (8) other members who shall be residents of this state appointed by the Governor with the advice and consent of the Senate.

(1) One (1) member shall be the chief electrical inspector of a municipality within the state;

(2) One (1) member shall be a licensed professional engineer engaged primarily in the design or maintenance of electrical installations;

(3) One (1) member shall be an electrical contractor operating in this state;

(4) One (1) member shall be a master or supervising electrician;

(5) One (1) member shall be a representative of a public electric utility operating in this state;

(6) One (1) member shall be a representative of a private electric utility operating in this state.

(7) One (1) member shall represent the public and shall not be affiliated with any of the other groups represented on the board; and

(8) One (1) member shall represent the elderly, shall be sixty (60) years of age or older and not actively engaged as or retired as an electrician. This member shall be appointed from the state at large, subject to confirmation by the Senate, and shall be a full voting member but shall not participate in the grading of examinations.

(c) The same person may not be both the public representative and the representative of the elderly.

(d) Each appointment shall be for a term of four (4) years or until a successor is appointed.

(e) In the event of a vacancy during a term, the Governor may appoint a replacement to fulfill the unexpired portion of the term.

(f) The board shall elect one of its members to act as its chair for a term of one (1) year, and he or she shall have a vote on all matters before the board.

(g) For cause and after a hearing, any appointed member may be removed from office by the Governor.

(h) Each appointed member may receive expense reimbursement and stipends in accordance with §25-16-901 et seq.

17-28-202. Duties of board and Department of Labor.

(a) It shall be the duty of the Board of Electrical Examiners of the State of Arkansas to:

(1) Adopt rules and regulations necessary for the implementation of this chapter;

(2) At least every six (6) months, conduct examinations of persons who apply for an electrician's license and grant licenses to qualifying applicants who have paid the prescribed fee; and

(3) Revoke or suspend the license of any licensee or the certification of any electrical apprentice for cause.

(b)(1) It shall be the duty of the Department of Labor to administer and enforce the provisions of this chapter.

(2) For the enforcement of this chapter, the Director of the Department of Labor or his or her designated employees shall have the authority to enter, during normal business hours, upon any private or public premises with right of access, ingress, and egress for the purpose of ascertaining whether a person has performed electrical work or installed or repaired electrical facilities thereon in accordance with the provisions of this chapter, §20-31-101 et seq., and the regulations and standards adopted pursuant thereto.

17-28-203. Examinations - Fees.

(a) The Board of Electrical Examiners of the State of Arkansas is authorized to conduct examinations of persons applying for a license as a master electrician, journeyman electrician, industrial maintenance electrician, residential master electrician, air conditioning electrician, or residential journeyman electrician. These persons shall pay fees established by the board, but in no event shall such examination fees exceed the following:

(1) Master electrician $100.00
(2) Journeyman electrician $100.00

(3) Industrial maintenance electrician .....$ 50.00
(4) Residential master electrician $100.00
(5) Residential journeyman electrician.....$100.00
(6) Air conditioning electrician $100.00

(b) Any applicant who shall fail to pass the examination shall be permitted to take the next scheduled examination upon payment of the required fees.

17-28-204. Hearing - Appeal.

All hearings conducted by the Board of Electrical Examiners of the State of Arkansas and all appeals taken from the decisions of the board shall comply with the Arkansas Administrative Procedure Act, §25-15-201, et seq.

17-28-301. Electrician's license - Issuance and renewal - Fees.

(a) Individuals passing the master, journeyman, residential master, residential journeyman, air conditioning electrician, or industrial maintenance electrician's examination as specified in §17-28-203 shall be issued a license of the same class as that of the examination upon payment of the following fees:

(1) Master electrician $50.00
(2) Journeyman electrician $25.00
(3) Industrial maintenance electrician $25.00
(4) Residential master electrician $50.00
(5) Residential journeyman electrician..... $25.00
(6) Air conditioning electrician $25.00

(b)(1) Licenses shall expire on the date indicated on the licenses. Licenses shall expire on the last day of the month, one (1) year following the date of the original license.

(2) The license may be renewed for a period of one (1), two (2), or three (3) years with the fee to be as follows:

(A) Master electrician ..... $50.00 per year
(B) Journeyman electrician ..... $25.00 per year
(C) Industrial maintenance electrician $25.00 per year
(D) Residential master electrician..... $50.00 per year
(E) Residential journeyman electrician $25.00per year
(F) Air conditioning electrician..... $25.00 per year

(3) Any licensee may renew his or her license within six (6) months following the expiration date on the license by

paying the renewal fee as indicated in subdivision (b) (2) of this section.

(4) If a licensee shall fail to renew his or her license within six (6) months after the expiration date on the license, the licensee may renew his or her license by paying a penalty of ten dollars ($10.00) for a journeyman or residential journeyman electrician, ten dollars ($10.00) for an industrial maintenance electrician or air conditioning electrician, and twenty dollars ($20.00) for a master electrician or a residential master electrician, in addition to the regular renewal fees.

(5) If the license is not renewed within one (1) year after the expiration date on the license, the licensee shall be required to take another examination as administered by the Board of Electrical Examiners of the State of Arkansas.

(c) The registration fee for an electrical apprentice shall be ten dollars ($10.00) annually. Apprentice registration certificates shall expire on the last day of the month, one (1) year following the date of original registration.

(d) The board shall be authorized to issue a temporary license as a master electrician or journeyman electrician which shall be valid for no more than six (6) months and be renewable one (1) time only for industry projects as defined in this chapter, upon submission by the applicant of the following:

(1) A temporary license fee in the amount established by §17-25-303(a);

(2) A completed application on a form furnished and approved by the board; and

(3) Evidence that the applicant holds a current license of the same classification issued by another state or has otherwise met the experience qualifications required under this chapter for the type of license being applied for.

17-28-302. Electrical contractor license.

(a) Any person, member, or employee of a firm, partnership, or corporation desiring to engage in the business of electrical contractor may apply for and be issued a license upon satisfying the Board of Electrical Examiners of the State of Arkansas that he or she or it is either a master electrician or employs a master electrician as its superintendent or manager

and shall pay a license fee in the amount of one hundred dollars ($100) per year.

(b) Any electrical contractor having met the requirements of this chapter may work in any municipality in the state without further examinations after first showing evidence of state license as described in this chapter and paying such fees as required by the municipality in which the work is to be performed.

17-28-303. License nontransferable.

No license certificates issued by the Board of Electrical Examiners of the State of Arkansas shall be assignable or transferable.

17-28-304. License requirements.

No person shall perform electrical work in this state or display or use any title, sign, card, advertisement or other device to indicate that the person performs electrical work or is an electrician unless the person has first obtained a license to perform electrical work pursuant to the provisions of this chapter, or the individual is exempted from licensing pursuant to the provisions of this chapter.

17-28-305. Local regulatory authority - Exceptions - Electrical inspectors.

(a) Any individual licensed or registered under the provisions of this chapter shall not be subject to examination or licensing by any city or county in order to perform electrical work.

(b) Any city or town may by ordinance, rules, regulations, or contract prescribe rules, regulations and standards for the materials used in the construction, installation and inspection of all electrical work in the city or county, provided the rules, regulations or standards are not in conflict with the standards prescribed by the Board of Electrical Examiners of the State of Arkansas pursuant to the authority of §17-28-202 and 20-31-104. Provided, that a city or county may by ordinance require a person, before doing electrical work on his or her primary residence, to demonstrate a technical competency to comply with the city or county standards. If the city has adopted an

ordinance to exercise its territorial planning jurisdiction and if the city and county agree to authorize such, a city may exercise jurisdiction over the construction, installation and inspection of electrical work within the city's territorial jurisdiction for planning authorized under §14-56-413.

(c) Any city or county may establish by ordinance, rules and regulations a system of permits and inspections for the installation, repair and maintenance of electrical facilities and electrical work.

17-28-306. Reciprocity.

The Board of Electrical Examiners of the State of Arkansas shall be authorized to issue licenses to those applicants holding equivalent licenses in other states, upon payment of the required fees and submission of proof of license in that state, provided an agreement has been reached with that state to recognize the electrical licenses held by Arkansas residents.

17-28-307. Restricted lifetime master electrician license.

(a)(1) Upon reaching the age of sixty-five (65), or any time thereafter, any person who has been a licensed master electrician licensed by the Board of Electrical Examiners of the State of Arkansas for not less than twelve (12) years may apply for a restricted lifetime master electrician license.

(2) This license shall be issued upon satisfactory proof of age and upon payment of a fee prescribed by the board.

(b) The board shall promulgate rules and regulations necessary to carry out the provisions of this section.

17-28-308. Electrical apprentices.

(a) Upon proper application and payment of the fee, the Board of Electrical Examiners of the State of Arkansas shall register as an electrical apprentice and issue a certificate of registration to any person who furnishes satisfactory proof that the applicant is enrolled in a school or training course for electrical apprentices certified by the Bureau of Apprenticeship and Training of the United States Department of Labor.

(b) The board shall take such actions as are reasonably necessary or appropriate to supervise and enforce

apprenticeship supervision ratios established by the board by regulation.

17-28-309. Penalties.

(a) The Director of the Department of Labor is authorized to petition any court of competent jurisdiction to enjoin or restrain any person who performs electrical work without a license or who otherwise violates the provisions of this chapter.

(b)(1) A civil penalty may be assessed against any person, firm, or corporation by the Department of Labor and subject to appeal and hearing before the Board of Electrical Examiners of the State of Arkansas according to the Arkansas Administrative Procedure Act, §25-15-201 et seq., if it is determined that the person, firm, or corporation has violated any:

(A) Provision of this chapter;

(B) Provision in the Arkansas Electrical Code Authority Act, §20-31-101 et seq.;

(C) Rule, regulation, or order issued or promulgated by the board; or

(D) Condition of a license, certificate, or registration issued by the board.

(2) For each violation, the penalty shall not exceed the following:

(A) Two hundred fifty dollars ($250) for a first offense;

(B) Seven hundred fifty dollars ($750) for a second offense; or

(C) One thousand dollars ($1000) for a third offense.

(3) Each day of a continuing violation is a separate violation for purposes of penalty assessment.

(4) Assessment of a civil penalty by the board shall be made no later than two (2) years after the date of the occurrence of the violation.

(5) If any person, firm, or corporation against whom a civil penalty has been imposed fails to pay the penalty within sixty (60) days of the board's decision, the director may file an action in a court of competent jurisdiction to collect the civil penalty without paying costs or giving bond for costs.

(6) Any penalties collected under this section shall be deposited as special revenues in the State Treasury to the credit of the Department of Labor Special Fund, there to be used by

the Department of Labor in carrying out the functions, powers, and duties of this chapter.

17-28-310. Grandfather clause.

(a) Applicants for a license pursuant to the provisions of this chapter shall be exempt from the examination requirement of §17-28-203, provided that the applicant:

(1) Is qualified by experience requirements to take the examination for a particular license classification under the provisions of this chapter and the regulations of the Board of Electrical Examiners of the State of Arkansas;

(2) Has not had a municipal electrician's license or a state electrician's license of any classification revoked or suspended for cause;

(3) Submits the appropriate fee; and

(4) Applies for a license prior to July 1, 1998.

(b) Notwithstanding any provision to the contrary, an applicant for a license pursuant to this section shall be exempt from the journeyman electrician examination requirement of § 17-28-203 if he or she has completed electrical apprenticeship training and education pursuant to a bona fide apprenticeship program registered with the United States Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training and he or she meets the requirements of subdivisions (a)(2) - (4) of this section.

17-28-311. Continuing education requirement.

(a) No journeyman electrician license or master electrician license shall be renewed unless the licensee completes at least eight (8) hours of continuing education for each National Electric Code cycle.

(b)(1) The Board of Electrical Examiners of the State of Arkansas shall promulgate rules to set standards for continuing education for licensees under this section.

(2) The rules shall include, but not be limited to, provisions of the National Electrical Code, as in effect on January 1, 2005.

G. ARKANSAS ELECTRICAL CODE AUTHORITY ACT

20-31-101. Title.

This chapter may be known and may be cited as the "Arkansas Electrical Code Authority Act".

20-31-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Board" means the Board of Electrical Examiners of the State of Arkansas created by §17-28-201 et. seq.;

(2) "Department" means the Department of Labor;

(3) "Director" means the Director of the Department of Labor;

(4) "Electrical facilities" means all wiring fixtures, appurtenances, and appliances for and in connection with a supply of electricity within or adjacent to any building, structure, or conveyance, but not including the connection with a power supply meter or other power supply source:

(5) "Electrical work" means:

(A) Installations of electric conductors and equipment within or on public and private buildings or other structures, including recreational vehicles and floating buildings, and other premises such as yards, carnivals, parking and other lots, and industrial substations;

(B) Installations of conductors that connect to the supply of electricity; and

(C) Installations of other outside conductors on the premises.

(6)(A) "Electrician" means any person, individual, member, or employee of a firm, partnership, or corporation which is engaged in the business of or who for hire:

(i) Plans, lays out, and supervises the installation, maintenance, and extension of electrical conductors and equipment; or

(ii) Installs, erects, repairs, or contracts to install, erect, or repair:

(a) Electrical wires or conductors to be used for the transmission of electric light, heat, power, or signaling purposes;

(b) Moulding, ducts, raceways, or conduits for the reception or protection of wires or conduits; or

(c) Any electrical machinery, apparatus, or systems to be used for electrical light, heat, power, or signaling purposes.

(B) "Electrician" also means an "electrical contractor", a "master electrician", a "journeyman electrician", or an "industrial maintenance electrician" licensed under §17-28-101 et seq.; and

(7) "Primary residence" means an unattached single-family dwelling used as the person's primary place of residence.

[NOTE: Ark. Code Ann. §17-25-101 et seq. is currently codified at Ark. Code Ann. §17-28-101 et seq., following a 1995 recodification of title 17.]

20-31-103. Exemptions.

(a) The following types of construction and structures shall be exempted from the provisions of this chapter:

(1) Any construction, installation, maintenance, repair, or renovation by a public utility regulated by the Public Service Commission, by a rural electric association or cooperative, or by a municipal utility, of any transmission or distribution lines or facilities incidental to their business and covered under other nationally recognized safety standards;

(2) Any construction, installation, maintenance, repair, or renovation of any nonresidential farm building or structure;

(3) Any construction or manufacture of manufactured homes covered by the federal Manufactured Home Construction and Safety Standards Act, 42 U.S.C. §4501 et seq.;

(4) Primary residences, whether existing or under construction, when the owner performs the electrical work thereon or the owner performs the construction, maintenance, or installation of electrical facilities thereon.

(b) The exemption from compliance with the standards promulgated in this section shall not be referred to in any way, and it shall not be any evidence of the lack of negligence or the exercise of due care by a party at a trial of any civil action to recover damages by any party.

20-31-104. Statewide standards - Enforcement of chapter.

(a) Beginning January 1, 1992, the Board of Electrical Examiners of the State of Arkansas is hereby empowered to adopt rules and regulations to establish statewide standards for the construction, installation, and maintenance of electrical facilities and the performance of electrical work.

(b) The board shall adopt the National Electrical Code, 1990 edition, of the National Fire Protection Association.

(c) In the event there are updates and new editions to the National Electrical Code, the board shall, after notice and public hearing, adopt such changes and editions which it determines are necessary to ensure the public health and safety.

(d) The statewide standards shall guarantee a uniform minimum standard for the construction, installation, and maintenance of electrical facilities and for the performance of electrical work in:

(1) Any new public, business, or commercial buildings or structures constructed after July 15, 1991;

(2) Any new educational institutions or buildings constructed after July 15, 1991;

(3) Any new single family or multifamily residence constructed after July 15, 1991;

(4) Any other type new construction undertaken in the State of Arkansas not specifically exempted under this chapter.

(e) The term "new" or "new construction" as used in this section shall apply to any new building or structure or any complete addition to or renovation of a building or structure where electrical conductors within are placed, added, or replaced in whole or part. It shall not apply to the repair or replacement of existing electrical conductors in existing buildings or structures or to minor repairs consisting of repairing or replacing outlets or minor working parts of electrical fixtures.

(f) It shall be the duty of the Department of Labor to administer and enforce the provisions of this chapter.

20-31-105. Compliance required - Penalties.

(a) Beginning January 1, 1992, unless specifically exempted under this chapter, no person or electrician shall perform any construction, installation, or maintenance of electrical facilities or perform electrical work in this state except in compliance with the statewide standards promulgated hereunder.

(b) Any person or electrician who does any construction, installation, and maintenance of electrical facilities or performs electrical work in this state without an exemption and not in compliance with the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars ($50.00) and not more than five hundred dollars ($500) or by imprisonment for not more than thirty (30) days, or both fine and imprisonment.

(c) In addition to the penalties in subsection (b) of this section, the Director of the Department of Labor is authorized:

(1) To petition any court of competent jurisdiction to enjoin or restrain any person or electrician who does any construction, installation, and maintenance of electrical facilities or performs electrical work without an exemption, or who otherwise violates the provisions of this chapter; and

(2) To seek the suspension or revocation by the Board of Electrical Examiners of the State of Arkansas of any "electrical contractor", a "master electrician", a "journeyman electrician" or an "industrial maintenance electrician" licensed under §17-28-101 et seq. who is found to be in violation of the provisions of this chapter.

H. APPRENTICESHIP PROGRAM

6-52-201. Definitions.

In this subchapter:

(1) "Apprenticeship training programs" means a training program that provides on-the-job training, preparatory instruction, supplementary instruction, or related instruction in

a trade that has been certified as an apprenticeable occupation by the Bureau of Apprenticeship and Training, United States Department of Labor;

(2) "BAT" means the Bureau of Apprenticeship and Training of the United States Department of Labor;

(3) "Coordination committee" means the State Apprenticeship Coordination Steering Committee;

(4) “Preparatory instruction" means a course of instruction lasting six (6) months or less that teaches the basic skills required for an individual to comply with the terms of his or her apprenticeship agreement as required by §6-52-207;

(5) "Program sponsor" shall mean any person, association, committee, or organization operating an apprenticeship program and in whose name the program is registered or is in the process of registration by the Bureau of Apprenticeship and Training of the United States Department of Labor.

(6) “Related instruction" means organized off-the-job instruction in theoretical or technical subjects required for the completion of an apprenticeship program for a particular apprenticeable trade;

(7) "Supplementary instruction" means a course of instruction for persons employed as journeymen craftsmen in an apprenticeable trade that is designed to provide new skills or upgrade current skills; and

(8) "Vo-Tech" means the Department of Workforce Education.

6-52-202. Applicability.

The provisions of this subchapter apply only to those apprenticeship training programs which receive state funds pursuant to the provisions of §6-52-207.

6-52-203. Rules.

The Department of Workforce Education and the State Apprenticeship Coordination Steering Committee shall promulgate rules necessary to implement the provisions of this subchapter.

6-52-204. State Apprenticeship Coordination Steering Committee.

(a)(1) The Department of Workforce Education shall, in collaboration with the Bureau of Apprenticeship and Training of the United States Department of Labor, recommend to the Governor, and the Governor shall appoint an apprenticeship and training advisory committee composed of members with the following qualifications:

(A) Five (5) persons representing employers of members of apprenticeable trades;

(B) Five (5) persons representing bargaining agents for members of apprenticeable trades;

(C) Five (5) persons representing the minority and female workforce who have knowledge of apprenticeship and are familiar with the needs of vocational and technical education; and

(D) Five (5) persons who teach or immediately supervise preparatory instruction, supplementary instruction, or related instruction courses.

(2) Members of the coordination committee shall serve terms of four (4) years.

(3) Vacancies shall be filled for the unexpired portion of a term vacated.

(b) Advisory members of the coordination committee shall include the following:

(1) One (1) person designated by and representing the Department of Workforce Education;

(2) One (1) person designated by and representing the Department of Labor;

(3) One (1) person designated by and representing the Bureau of Apprenticeship and Training;

(4) One (1) person designated by and representing the teachers training division of the University of Arkansas; and

(5) One (1) person representing the general public who is familiar with the goals and needs of apprenticeship in Arkansas and who is not otherwise eligible for service on the coordination committee.

(c)(1) The member representing the general public shall be appointed by the Department of Workforce Education for a term of four (4) years.

(2) All other nonvoting members of the coordination committee shall serve at the pleasure of the agency or institution each respective member represents.

(d) The apprenticeship coordination steering committee as outlined in this section will become the State Apprenticeship Coordination Steering Committee.

6-52-205. Apprenticeship Coordination Steering Committee - Duties.

(a) The State Apprenticeship Coordination Steering Committee shall recommend to the State Board of Workforce Education and Career Opportunities a statewide plan for the development of a comprehensive program of apprenticeship training which shall include but not be limited to the following:

(1) Formulas and administrative procedures to be used in requesting appropriations of state funds for apprenticeship training;

(2) Forms, formulas, and administrative procedures to be used in distributing available funds to apprenticeship training programs; and

(3) The content and method of the public notice required by this subchapter.

(b) The Department of Workforce Education shall furnish the coordination committee with the current data necessary to develop the plan. All state boards and agencies shall cooperate with the coordination committee and shall furnish information and material on request.

(c) Pursuant to this section, the reporting procedures shall be included in the state plan for apprenticeship.

6-52-206. Recommendations.

(a) Recommendations of the State Apprenticeship Coordination Steering Committee submitted to the Department of Workforce Education must be acted on, and either accepted or rejected.

(b) A recommendation which is rejected must be returned immediately to the coordination committee, accompanied by written notice of the reasons for rejecting the recommendation.

6-52-207. Training programs generally.

(a) Pursuant to the provisions of this subchapter, the Director of he Department of Workforce Education shall allocate state funds for the support of apprenticeship training programs that meet the criteria set forth in this subchapter.

(b) A program must be co-sponsored by a public school district, an educational cooperative, a state postsecondary institution, a vo-tech school, or a two-year community college pursuant to a contract between the district or institution and an apprenticeship program sponsor.

(c) A program must be under the direction of an apprenticeship coordinator appointed by the apprenticeship program sponsor who shall perform the duties set forth in § 6-52-208.

(d) Each apprentice participating in a program must be given a written apprenticeship agreement by the apprenticeship program sponsor stating the standards and conditions of his or her employment and training. The apprenticeship agreements are furnished by the Bureau of Apprenticeship and Training of the United States Department of Labor.

(e) An apprentice may not be charged tuition or fees by a public school district or state postsecondary institution other than an administrative fee to cover the costs of processing his or her records which shall not exceed twenty-five dollars ($25.00) for each course in which the apprentice is enrolled. The apprentice or the program sponsor may be required to furnish books and special equipment.

(f) Funding for a program, in addition to any other money available, shall be provided by the apprenticeship program sponsor pursuant to the terms of the contract referred to in subsection (b) of this section. The program sponsor may charge an apprentice or the employer of the apprentice tuition and fees to cover administrative costs incurred while the apprentice is registered with the program sponsor.

(g) Pursuant to the terms of the contract referred to in subsection (b) of this section, adequate facilities, personnel, and resources to effectively administer the apprenticeship training program in a manner consistent with the public's need for skilled workers and the apprentice's need for marketable skills in apprenticeable occupations must be provided.

(h) A program must be registered with the Bureau of Apprenticeship and Training of the United States Department of Labor and the Department of Workforce Education.

6-52-208. Duties of apprenticeship program sponsors.

(a) The apprenticeship program sponsor of each apprenticeship training program shall:

(1) Establish standards and goals for preparatory instruction, supplementary instruction, and related instruction for apprentices in the program;

(2) Establish rules governing the on-the-job training and other instruction for apprentices in the program;

(3) Plan and organize instructional materials designed to provide technical and theoretical knowledge and basic skills required by apprentices in the program;

(4) Recommend qualified instructors for the program;

(5) Monitor and evaluate the performance and progress of each apprentice in the program and the program as a whole; and

(6) Interview applicants and select those most qualified for entrance into the program.

(b) A program must provide for the keeping of records of the on-the-job training and progress of each apprentice.

(c) A program must require instructors to maintain recommended qualifications.

(d) A program must perform any other duties which promote the goals of individual apprentices and of the program as a whole.

This digest is **not** a comprehensive compilation of all the laws of the State of Arkansas affecting labor relations. Among the more prominent laws **not** included are those in the following areas:
Employment Security
Workers' Compensation
Liens
Public Employment.

In addition to the labor laws of the State of Arkansas, administrative rules and regulations have been established to better define some laws and to implement the enforcement of other laws. Administrative rules and regulations exist for the following laws:
Wage and Hour
Boiler Inspection
Board of Electrical Examiners
Prevailing Wage
Elevators
Occupational Safety and Health.

For copies of these rules and regulations, contact the Arkansas Department of Labor, Planning and Publications Division, 10421 West Markham, Little Rock, Arkansas 72205, phone (501)682-4537, e-mail asklabor@arkansas.gov